United States Court of Appeals

for the Second Circuit

APPENDIX

77-7220

Docket No. 77-7220

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CARL F. HOLLANDER

Plaintiff-Appellant

- against-

THE MUTUAL LIFE INSURANCE
COMPANY OF NEW YORK

Defendant-Appellee

PLAINTIFF-APPELLANT'S APPENDIX

(On appeal from the United States
District Court, Southern District
of New York)

UNITED STATES COURT OF APPEALS
FILED
JUL 29 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

CARL F. HOLLANDER
for Plaintiff-
Appellant, pro se
6 Northridge Rd.
Old Greenwich,
Conn. 06870
(Tel. 203-637-
0012)

PAGINATION AS IN ORIGINAL COPY

INDEX TO PLAINTIFF-APPELLANT'S APPENDIX

(References to parties will be to "Hollander and "MONY, and to the "Plan" and the "Allowance" under MONY's Plan)

	PAGE
Docket Entries	A-1
Complaint	A-2
Memorandum Decision	A-3
Judgment	A-4
MONY's Answers to Hollander's Interrogatories	A-5
Transcript	A-5-A - A-83
Hollander's Exhibits:	
1. MONY's Termination Allowance Plan	A-84
2. Memo, 10/13/72, Cantor to members of MONY's Law Department	A-85
3. Article about Plan in MONY's Newspaper (1968)	A-86
5. (For Identification) Compilation of salary data for certain MONY employees who received the Allowance	A-87
7. Copy of MONY Newspaper Article with Tables showing level of Early Retirement Benefits before and after 10/1/73	A-88
(Exhibit 4, voluminous salary record cards, not found in Appeal file, and Exhibit 6, voluminous memoranda, not reproduced)	
MONY's Exhibits:	
A. Memo, Hollander to Cantor, asking Reconsideration of his Request for Allowance	A-89
B. Memo, 11/2/70, Hollander to Cantor, discussing arrangements for his then forthcoming leave of absence	A-90
C. Memo, 10/24/72, Hollander to Cantor, asking for Reconsideration of his Request for Allowance	A- 91
D. Memo, 10/23/72, Cantor to Hollander, stating MONY's Refusal to grant Allowance	A- 92
E. Memo, October 1972 listing action taken under Plan for period of about 10 years before memo	A- 93
F. Memo, 11/16/70, McMullen to Noll, discussing arrangements for Hollander's then forthcoming leave of absence	A-94
G. Chart showing organization of MONY's Law Department just before Hollander's decision to retire from MONY	A-95

BEST COPY AVAILABLE

EXPLANATION TO COURT OF APPENDIX NUMBERING

The peculiar numbering of some of the Transcript pages (e.g. A-5-A, A-5-B, etc.) arose out of a disagreement between Counsel as to how much of the trial transcript plaintiff-appellant ("Hollander") would have to include in his Appendix. Hollander, who was not promptly notified that defendant-appellee would guarantee payment for the inclusion of transcript pages Hollander had not designated for inclusion, prepared and numbered the transcript pages as Appendix pages , for reproduction of the needed number of copies, on his assumption as to what pages were essential to the issues. When defendant-appellee's counsel belatedly notified Hollander that it would pay for such pages, at least initially, he arranged for their inclusion by the use of the numbering system referred to above, so as to avoid having to change so many other Appendix page references. The insertion of the additional pages was arranged for after the Appendix had been completed, and numbered, on such original basis.

Since the transcript is now complete, the asterisks which appear at a few places to show omissions should be disregarded.

JUDGE CANNELLA

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date: 74 CIV. 913

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
CARL F. HOLLANDER vs. THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.	For plaintiff: ARTHUR P. SILSDORF 350 Fifth Avenue, N.Y.C. 10001 564-1148 For defendant: ROGERS & WELLS 200 Park Avenue, N.Y.C. 10017 972-7000

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
3, 5 mailed X	Clerk		2-27-74	A Schedule	15	
			3-1-74			15
3, 6 mailed ✓	Marshal					
asis of Action:	Docket fee					
recover termination pay.						
	Witness fees					
tion arose at:	Depositions					

A-1

74 CIV. 913

(PG #2)

DATE	PROCEEDINGS	Date Of Judgment
Feb27-74	Filed Complaint. Issued Summons.	
March 15-74	Filed summons and return- served:The Mutual Life Insurance Co. of N.Y. by A.F. Gastman on 3-5-74.	
Mar 27-74	Filed defts Notice to take deposition of pltff on 4-29-74.	
March 28-74	Filed stip & order extending deft's time to answer to 4-24-74. So ordered- CANNELLA, J.	
Apr. 24-74	Filed stip & order that the time for the deft. to answer is extended to 5-17-74. So ordered- CANNELLA, J.	R&D
May 17-74	Filed ANSWER of deft to the complaint.	
Jun 3-74	Filed defts Aff. & Notice of Motion for an order dismissing the complaint,directing summary judgment, etc. rtble before Cannella, J. on 6-21-74.	
Jun 3-74	Filed defts mem of law in support of motion for summary judgment.	
June 24-74	Filed stip & order adjourning deft's motion for summary judgment, now retnble 6-21-74 to 7-25-74. So ordered- CANNELLA, J.	
Jul. 26-74	Filed stip & order adjourning deft's return date for motion for summary judgment from 7-25-74 to 9-12-74. So ordered- CANNELLA, J.	
Aug 2-74	Pre-trial conference held- Schreiber, U.S. Mag.	
Sept2-74	Filed stip & order that the return date for the motion by deft for summary judgment is extended to 11-12-74. Cannella, J.	
Oct. 15-74	PRE-TRIAL CONFERENCE HELD BY Schreiber, U.S. Mag.	
Nov. 7-74	Filed pltff's Rule 9 (g) statement.	
Nov. 7-74	Filed pltff's memorandum of law in opposition to motion for summary judgment and in support of summary judgment against deft.	
Nov. 8-74	Filed stip & order adjourning deft's motion for summary judgment from 11-12-74 to 12-10-74. So ordered- CANNELLA, J.	
Dec. 10-74	Filed stip & order that deft's motion for summary judgment is adjourned from 12-10-74 to 1-15-75. So ordered- CANNELLA, J.	
Jan. 14-75	Filed deft's reply affdvt. of Samuel C. Canter to answering papers of pltff to the motion for summary judgment.	
Jan. 14-75	Filed deft's reply memorandum of law.	
Jan. 23-75	Filed stip & order that the return date of the motion for summary judgment is adjourned from 1-15-75 to 2-5-75. So ordered- CANNELLA, J.	
Feb. 5-75	Filed pltff's reply affdvt.	
Feb. 5-75	Filed pltff's memorandum of law in reply to deft's reply memorandum of law.	
March 12-75	Filed memo endorsed on motion filed 6-3-74. The within motion for summary judgment (FRCP 56 (b) is hereby denied. So ordered- CANNELLA, J. (m/n)	
March 24-75	Filed deft's affdvt. & notice of motion to amend a prior order denying summary judgment etc. Ret.4-3-75	
March 24-75	Filed deft's memorandum in support of above motion.	
Apr. 1-75	Filed pltff's memorandum of law in opposition to motion that a question of law be certified for interlocutory appeal.	
Apr. 8-75	Filed memo endorsed on motion filed 3-24-75. For the reasons stated, the motion to amend the order of this Court dated 3-14-75 so as to include certification pursuant to 28 U.S.C. s. 1292 (b) is hereby denied. It is so ordered- CANNELLA, J. (m/n)	
Sept.19-75	Filed Defts answer to request to produce.	
Sept.19-75	Filed Defts answer to Pltff's interrogs.set No. 1.	
Jan. 28-76	Filed pltff's notice of motion for an order to compel. Ret. 02-04-76	
Jan. 28-76	Filed memorandum in support of pltff's motion to require deft. to answer certain interrogs. and supply certain documents.	
Jan. 28-76	Filed pltff's request for documents.	
Jan. 28-76	Filed pltff's interrogs., set nO. 1.	
02-10-76	Filed stip & order adjourning the motion to compel answers to interrogs. and produce documents from 02-04-76 to 02-25-76. So ordered- CANNELLA, J.	

(CONT'D — PG #3)

A-1

D. C. 110 Rev. Civil Docket Continuation

(CANNELLA, J.)

DATE	PROCEEDINGS
02-24-76	Filed deft's affavt. of John H. Carley in opposition to motion to compel answ to interrogs. and produce documents.
03-01-76	Filed memo endorsed on motion filed 01-28-76. The within motion is hereby referred to Magistrate Schreiber to hear and report, etc. So Ordered- CANNELLA, J. (m/n)
11-19-76	PRE-TRIAL CONFERENCE BY CANNELLA, J
03-22-77	Filed Deft's affidavit and Notice of motion for an order for summary judgment prusuant to Rule 56 FRCP.RET: 4-1-77.
03-22-77	Filed Deft's Memorandum of Law in support of motion for summary judg
04-04-77	BEFORE CANNELLA, J. NON-JURY TRIAL BEGUN, CONT'D AND CONCLUDED. Judge's decisio reserved. Submit briefs.
04-05-77	Filed Deft's Trial Memorandum
04-05-77	Filed Pltff's Trial Memorandum
04-06-77	Filed Memorandum-Decision-- for the reasons stated, the complaint is hereby dismissed. The foregoing constitutes the findings of fact and conclusions of law pursuant to FRCP 52 (a). So ordered- CANNELLA, J. (m/n)
04-12-77	Filed Judgment that DEFT have judgment against PLAINTIFF dismissing the complaint. RAYMOND F. BURGHARDT, CLERK m-n

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By [signature]
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
----------X

JUDGE CANNELLA

CARL F. HOLLANDER,

Plaintiff,

-vs.-

THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK,

Defendant
----------X

COMPLAINT

FILE NO.

74 CIV. 913

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
2 37 PM '74

Plaintiff, by his attorney, ARTHUR R. SILSDORF, respectfully shows to the Court and alleges as follows:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff now is, and since November of 1947 has been a resident of the Town of Greenwich, County of Fairfield, State of Connecticut.

2. The Mutual Life Insurance Company of New York now is, and has been, a corporation duly organized in the State of New York, and has its principal places of business in that state.

3. Plaintiff and defendant are citizens of different states, as alleged in Paragraphs 1 and 2 above, so that diversity of citizenship exists, and the matter in controversy hereunder exceeds $10,000 exclusive of interest and costs.

4. Plaintiff, CARL F. HOLLANDER, became an employee of the defendant Corporation on Monday, November 2, 1936, and was employed in the Law Department of defendant for thirty-six (36) years and one month, until December 1, 1972, when his employment terminated upon his early retirement under the Early Retire-

ORDERED, ADJUDGED and DECREED: That defendant THE MUTUAL

ment
/provisions of defendant's pension plan, which is entitled, "Security Plan for Employees," hereinafter referred to as the "Security Plan".

5. Immediately prior to the time of such termination of plaintiff's employment, referred to in Third above, plaintiff held the title of Assistant General Counsel, was an Administrative Officer of defendant, and was receiving a salary at the rate of $32,800 per annum.

6. Plaintiff was born on the 20th day of July, 1913, and on the 1st day of December, 1972, was 59 years of age. A2

7. In September, 1955, defendant's Board of Trustees adopted a Termination Allowance Plan for Clerical and Administrative employees, hereinafter referred to as the "Termination Allowance Plan.

8. The Termination Allowance Plan, as adopted in 1955, and as amended at various times thereafter, has been in force at all times up to and including the present.

9. The terms of the Termination Allowance Plan, as in force on December 1, 1972, are as set forth in Exhibit A, attached hereto and made a part hereof.

10. Upon information and belief, the existence and nature of the Plan were at all times since its adoption in 1955, and now are, set forth in defendant's Supervisor's Manual.

11. The existence and nature of the Termination Allowance Plan, and defendant's uniform practice, subject to only rare exceptions, of granting the termination allowance under the Termination Allowance Plan to long service employees, at least upon early retirement at ages 55 and over, were well known

to, and the subject of frequent conversations among defendant's employees at all times from its adoption and up to December 1, 1972, and upon information and belief, at all times up to the present.

12. Plaintiff, in continuing his employment with defendant after 1955 relied upon defendant's uniform practice, referred to in Paragraph 11 above, of granting such Termination Allowance in its administration of the Termination Allowance Plan as a separate and independent, although related, adjunct to the Early Retirement income provisions of the Security Plan, which income was regarded by defendant's employees as being, in itself, inadequate without such supplementation in the form of the grant of termination allowance through such administration of the Termination Allowance Plan. In plaintiff's case, the grant of the full Termination Allowance of 52 weeks salary would be the approximate equivalent to the value of 3 years of Early Retirement income at the rate payable to plaintiff under the Security Plan.

13. In or about October, 1970, plaintiff applied to defendant for Early Retirement and for the 52 weeks salary termination allowance under the Termination Allowance Plan. About one month later and sometime in the month of November, 1970, plaintiff was informed that his application had been refused, defendant claiming that the termination allowance was not to be granted to valued employees, such as plaintiff, who defendant did not wish to lose.

14. In late November or early December, 1970, defendant as an inducement to plaintiff not to take Early Retirement, but

instead to continue as an employee of defendant, offered plaintiff a leave of absence amounting to approximately four (4) months, exclusive of vacation and holidays, at full salary, on the understanding that plaintiff would return and continue to work for at least one (1) year.

15. Defendant accepted plaintiff's offer for the leave of absence referred to in Paragraph "14" above, took such leave of absence in the early part of 1971, returned to active employment on or about July 1, 1971, and continued in such employment until December 1, 1972, a period of substantially in excess of one (1) year. A2

16. In October 1972, plaintiff again applied for the Termination Allowance.

17. Defendant again refused plaintiff's application for the termination allowance, referred to in Paragraph "16" above upon the same ground as is referred to in Paragraph "13" above, and upon the additional ground that such allowance was not granted for employees who terminated and would be taking a position with another employer, as plaintiff was planning to do.

18. Defendant eliminated plaintiff's position as Assistant General Council and Administrative Officer, and spread plaintiff's duties and responsibilities among two or more other attorneys in its Law Department.

19. Defendant's action in refusing to grant defendant's application for termination allowance, referred to in paragraphs "16" and "17" above, was contrary to the terms of the Termination Allowance Plan, contrary to its spirit and intent, contrary to defendant's uniform practice in the administration ofthe Termination Allowance Plan referred to in

Paragraph "11" above, and such action was arbitrary and capricious in its nature, was an action which discriminated unfairly against plaintiff, as compared with other terminating employees similarly situated whose applications for termination allowance had been granted under defendant's uniform practice, referred to above, and was contrary to public policy as being, in effect, an unwarranted, wrongful and unconscionable penalty for an employee's good performance.

20. At no time prior to December 1, 1972 did defendant inform its employees, in writing or otherwise, that the termination allowance under the Termination Allowance Plan would be denied to valued employees or to employees who intended to work for another employer.

A2

21. Plaintiff has at all times during his employment with defendant fully performed all duties, responsibilities and obligations to be performed on his part, and plaintiff has fully exhausted all of his remedies in support of his application for the termination allowance, referred to in Sixteen above, in defendant's corporate organization and with governmental agencies.

FOR A SECOND CAUSE OF ACTION

22. Plaintiff repeats and realleges the allegations set forth in paragraphs"1" through "21" above with the same force and effect as if set forth verbatim below.

23. The Termination Allowance Plan states that the termination allowance "will normally be payable as salary continuance;" otherwise in installments over a shorter period, or in a lump sum.

24. Upon information and belief, the choice of which of the methods of payment referred to in Paragraph "23" above,

ANSWER:

is at the employee's election, and if salary continuance is chosen, the status of the terminating employee as an employee is continued during the period of such salary continuance.

25. Upon information and belief, defendant should have continued plaintiff's employment until August 1, 1973, representing the full 52 weeks salary termination allowance less an allowance for the four (4) months leave of absence granted to him in 1971, in which case he would have been entitled to the following increased benefits:

(a) A increase in an annual retirement income paid to him under defendant's Security Plan, based on increased formula credits pursuant to the provisions thereof, which increase is from $13,438 to about $15,000.

A2

(b) An increase in the life insurance benefit payable under the Security Plan as a spouse's Monthly Income Death Benefit upon the employee's death, in an amount equal to specified percentages of the retirement income referred to in (a) above.

(c) Continuance of plaintiff's participation in defendant's Investment Plan for Employees, under which defendant's contributions under such Investment Plan would have amounted to $984.00.

WHEREFORE, plaintiff demands judgment that:

a. Defendant pay plaintiff the sum of $21,867, representing 52 weeks salary at the rate which Plaintiff was being paid immediately prior to his termination employment by Early Retirement

number of such installments, and the period of salary

on December 1, 1972, less an allowance for four (4) months leave of absence granted to him in 1971.

b. Defendant specifically performed its obligations regarding plaintiff's being entitled to the increased benefits referred to in (a) and (b) of Paragraph "25" above.

c. In the event specific performance referred to in (b) above is not granted, defendant pay to plaintiff an amount equal to the reasonably equivalent Actuarial value of such benefits.

d. Defendant pay plaintiff the sum of $984.00, the amount claimed in (c) of Paragraph "25" above.

e. Such other and further relief as may be just, together with interest on all sums due and the costs and disbursements of this action.

A2

Dated: New York, N.Y.
February 27, 1974

Arthur R. Silsdorf
Attorney for Plaintiff
350 Fifth Avenue
New York, New York 10001
Telephone (212) 594-4148

U.S. DISTRICT COURT
FILED
APR 6 1977
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

CARL F. HOLLANDER, Plaintiff,	:	MEMORANDUM DECISION
-against-	:	74 Civ. 913 (JMC)
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.	:	

- X

CANNELLA, D.J.:

After a bench trial, the complaint is hereby dismissed.[1/]

Plaintiff Carl Hollander brought this action to enforce his rights under a Termination Allowance Plan ("TAP" or "Plan") of the defendant company. Because the Court finds that the granting of allowances pursuant to the Plan is purely discretionary and, further, that the Plan was not intended to cover persons in plaintiff's situation vis-à-vis the company, the instant complaint must fall.

1/ Defendant's renewed motion for summary judgment is dismissed as moot.

MICROFILM
APR 6 1977

36

A3

The Court has diversity jurisdiction in that plaintiff is a Connecticut resident and the defendant is a New York corporation, and the amount in controversy exceeds $10,000. 28 U.S.C. § 1332.

THE FACTS

Plaintiff Hollander, having spent thirty-four years in defendant's employ, tired of commuting from his home in Greenwich, Connecticut to his office in New York and desirous of travel, approached his superior, Samuel Cantor, in the fall of 1970 to apprise Cantor of his wishes and to inquire into plaintiff's receiving an allowance under the TAP. In that plaintiff held the top level position of Assistant General Counsel and was a valued employee of the company, Cantor felt he could not recommend to personnel that Hollander be granted an allowance. Indeed, to encourage plaintiff to remain with the legal department of Mutual Life Insurance Company of New York ("Mutual"), he was given a four-month paid leave of absence on the condition of his continued employment with the company until the end of 1971.

The plaintiff took leave and returned in June of 1971. He did not again bring up the subject of his leaving or his entitlement to a termination allowance until

A3

the fall of 1972. At that time, his request was again refused by Mr. Cantor for the same reason. On December 1, 1972 the plaintiff, then age 59, retired from Mutual's employ without receiving an allowance but receiving all regular benefits pursuant to the Early Retirement Provisions of defendant's pension plan.

Plaintiff claims he was wrongfully denied an allowance under the TAP in that defendant's practice was to award allowances to persons over age 55 of long-time service to the company. The evidence at trial showed instead that allowances were granted in order to encourage certain employees to leave the company in situations where it was in the company's best interest that such employment be terminated. The allowance was not intended as a bonus to be given to valued employees upon their leaving.

The Termination Allowance Plan reads in pertinent part:

> Employees with 10 or more years of completed service; who have not reached age 62; and who terminate voluntarily or otherwise for any reason except death, disability retirement or lay-off; may, <u>solely at the discretion of the Company</u>, be given termination allowances of up to 10 weeks' salary for the first 10 years of completed service, and up to 2 weeks' salary for each subsequent completed year of service with a maximum allowance of 52 weeks' salary. Such allowance will be considered only:

A3

(a) When the employee's position can be abolished or the salary savings from the replacement at a lower salary are sufficient to recover the amount of the termination allowance within 5 years, or

(b) When in the opinion of the Company it is desirable to encourage the employee to seek employment elsewhere, retire early, or engage in Field Underwriting.

(Emphasis in original.)

For the ten-year period from 1963 to 1972, approximately sixty percent of all eligible employees received allowances. Although most long-term employees received this additional benefit, the persons whose situations most closely resembled that of plaintiff did not. Specifically, of the five members of defendant's legal department who retired during this period, the only one to receive an allowance was an individual whose retirement had been desired by the company.

DISCUSSION

On these facts plaintiff cannot prevail. Firstly, Hollander was unable to prove that he even qualified for an allowance under either subsection of the TAP. Although there was testimony that upon his retirement his work was distributed among the other members of Mutual's legal department, only ten months later the position of Assistant

A3

General Counsel was again filled at approximately the same salary. Cantor's uncontradicted testimony is clear that Hollander's retirement was neither encouraged nor desired by the company.

Additionally, the language of the Plan makes clear that the granting of allowances is "solely at the discretion of the Company." Nor has plaintiff shown that "defendant's practical construction of the involved plan or of the fashion in which the company has dealt with other similar claims,"[2/] is otherwise, such that he would have a reasonable expectation of receiving an allowance despite the written words of the Plan. See generally Hainline v. General Motors Corp., 444 F.2d 1250, 1257-58 (6th Cir. 1971). This is not a case where defendant has been guilty of bad faith, fraud or arbitrariness. See Matthews v. Swift & Co., 465 F.2d 814 (5th Cir. 1972).

2/ On March 12, 1975, this Court denied defendant's motion for summary judgment to give plaintiff the opportunity to discover defendant's "practical construction" of the Plan so that plaintiff might prove his reasonable expectation of receiving a termination allowance.

A3

CONCLUSION

Accordingly, the complaint is hereby dismissed.

The foregoing constitute the findings of fact and conclusions of law of the Court pursuant to Fed. R. Civ. P. 52(a).

SO ORDERED.

John M. Cannella
JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
April 5, 1977.

A3

Cancelled

U. S. DISTRICT COURT
FILED
APR 12 1977
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

CARL F. HOLLANDER

Plaintiff

-against-

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

Defendant

- X

74 Civil 913 (JMC)

JUDGMENT

The issues in the above entitled action having been brought on regularly for trial, before the Honorable John M. Cannella, United States District Judge, on April 4, 1977, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on April 6, 1977, having handed down its memorandum decision, constituting its findings of fact and conclusions of law, and the Court having found in favor of the defendant, it is,

MICROFILM
APR 12 1977

ORDERED, ADJUDGED and DECREED: That defendant THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK have judgment against plaintiff CARL F. HOLLANDER dismissing the complaint.

Dated: New York, N.Y.
April 12, 1977

Raymond F. Burghardt
Clerk

39

A4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEP 13 1 37 PM '74

- x

CARL HOLLANDER, :

Plaintiff, : 74 Civ. 913 ([redacted])

-against- :

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, :

Defendant. :

- x

ANSWERS TO PLAINTIFF'S INTERROGATORIES, SET NO. 1

1. INTERROGATORY NO. 1:

State your name.

ANSWER:

Neal M. Jewell.

2. INTERROGATORY NO. 2:

What is your relationship to the Defendant?

ANSWER:

I am Vice-President for Personnel of Defendant.

3. INTERROGATORY NO. 3:

If you are employed by the Defendant state your position.

ANSWER:

See answer to Interrogatory No. 2, supra.

4. INTERROGATORY NO. 4:

If you are employed by the Defendant state the period of time in which you have occupied your current position.

ANSWER:

Objection is taken to this Interrogatory because it requests information totally unrelated to the issues at bar. In

AS

answering interrogatories propounded to a corporate party, the Federal Rules of Civil Procedure only require that the person who signs the answers must be an officer of the corporation. There is no need to respond to inquiries about his employment history.

5. INTERROGATORY NO. 5:

Have you held any other positions with the Defendant; if so state what those positions were and the years you occupied each position.

ANSWER:

See answer to Interrogatory No. 4.

6. INTERROGATORY NO. 6:

Is anyone aiding you in the preparation of these answers; if so state who those persons are and what relationship they have with Defendant.

ANSWER:

John H. Carley, an attorney associated with the firm of Rogers & Wells, counsel for Defendant, aided in the preparation of these answers.

7. INTERROGATORY NO. 7:

List the name of each employee of Defendant whose service terminated for any reason other than death or total disability, and whose annual salary rate on termination was in excess of $8,500 per year, after September, 1955, and on or after 20 years of service, but before December 1, 1972, and before attainment of his or her 62nd birthday, and with respect to each such employee, and also for employees Arthur Melley and Richard Young, the following information:

a. The current address of each such employee who is still living.

A5

ANSWER:

Attached hereto at Tab A is a list compiled by Defendant concerning the information requested in Interrogatories 7a to 7h. The information contained at Tab A, however, is limited to persons who terminated their employment after January 1, 1963 and before December 1, 1972 because there are no records prior to 1963 and objection is taken to information concerning persons who left the employ of Defendant after December 1, 1972.

b. Date of last day of actual employment.

ANSWER:

See Tab A.

c. Date to which salary was paid.

ANSWER:

See Tab A.

d. Any and all amounts paid as Termination Allowance under Defendant's Termination Allowance Plan (the "Plan"), or as other severance or termination compensation.

ANSWER:

Insofar as the interrogatory requests information of alleged payments of "other severance or termination compensation", it is objectionable because the sole issue of this matter is whether Plaintiff is entitled to compensation under the specific terms of the Termination Allowance Plan ("Plan"). There is no allegation in the complaint that Plaintiff is entitled to any other compensation. Moreover, absent a specific definition, Defendant does not understand the meaning of "other severance or termination compensation" as used herein. With respect to amounts paid under the Plan, see Tab A.

e. Whether any such amounts were payable in a lump sum, or in installments, or as salary continuance, including the

A5

number of such installments, and the period of salary continuance.

ANSWER:

Defendant restates the objection made in the answer to Interrogatory No. 7d., supra. With that objection, the amounts paid under the Plan are set forth at Tab A.

f. Annual salary rate for each such employee, including Plaintiff, during the 5 year period prior to the termination of actual employment, including the specification of such rate as of any date when such rate was changed.

ANSWER:

With respect to the persons listed at Tab A, all persons had annual salaries in excess of $8,500, which is the relevant salary criterion for eligibility under the Plan. Objection is taken to furnishing the specific salaries of each person so listed because the information is not only irrelevant to the instant claim but is a breach of fiduciary responsibility and confidentiality owed each employee by Defendant.

g. Attained age and number of years and months of service accrued as of the last day of active employment.

ANSWER:

See Tab A.

h. Amount of Early Retirement income payable annually before age 65.

ANSWER:

Objection is taken to this Interrogatory because the sole claim made in this lawsuit is for alleged benefits under the Plan. Any rights to "Early Retirement Income" forms no part of the undisputed terms of the Plan.

A5

8. INTERROGATORY NO. 8:

Give the annual salary rates and titles as of December 1, 1972 for the following members of Defendant's Law Department: Michael Kaplan, Clifford Ferguson, George Rodger, Jeanne Cullinan Ray, John Hughes, and any other attorney or law assistant who took over any of Plaintiff's duties and responsibilities during the one year period starting with December 1, 1972.

ANSWER:

Michael Kaplan, Esq., Counsel, $28,500;

Clifford Ferguson, Esq., Counsel, $28,500;

George Rodger, Esq., Asst. Counsel, $24,600;

Jeanne Cullinan Ray, Assoc. Counsel, $22,500;

John Hughes, Law Assistant, $14,014.

9. INTERROGATORY NO. 9:

Give minimum and maximum salary amounts for each employee who was in Plaintiff's management position classification as of December 1, 1972, and the name, address and title of each such employee.

ANSWER:

Objection is taken to this Interrogatory because the information sought is unrelated to the terms of the Plan.

10. INTERROGATORY NO. 10:

Set forth the formulas for determining Early Retirement Income under the pension provisions of Defendant's Security Plan which were in effect as of December 1, 1972, and as of the effective date in 1973 of each amendment to such provisions.

ANSWER:

Objection is taken to this Interrogatory because there is no allegation in this matter that Plaintiff has been denied benefits "under the pension provision of Defendant's Security

A5

Plan." Such benefits, if any, are unrelated to the terms of the Plan. Moreover, since the complaint alleges rights as of December 1, 1972, requests for information related to events after that time are beyond the proper scope of discovery.

11. INTERROGATORY NO. 11:

State whether or not, during the period between September of 1955, and December 1, 1972, terminating employees of the type referred to in 7 above were asked in writing to answer any questions, give any undertaking, or make any written representations concerning their taking of other employment, and whether Defendant at any time before or after such termination made any investigation regarding that subject. If the answer is in any way affirmative, state nature of any such questions, undertaking, representation or investigation, and the nature of any action taken in connection therewith.

ANSWER:

No.

Dated: New York, New York
September 17, 1975

Neal M. Jewell

Neal M. Jewell

TO: ARTHUR R. SILSDORF, ESQ.
Attorney for Plaintiff
350 Fifth Avenue
New York, New York 10001
Tel. (212) 594-4148

A5

Name	Age	Completed Years of Service	Current Address	Last Day Worked	Paid To Date	Allowance
Hollander, Carl	59	36	6 Northridge Rd. Old Greenwich, Connecticut 06870	11/15/72	11/30/72	None
Myrtle, Helen	61	38	18 Halstead Ave. Harrison, NY 10528	11/30/72	11/30/72	1 X Ann. Salary
Ritter, Joseph	60	44	57 Walnut Ave. Red Bank, NJ 07701	11/30/72	11/30/72	"
Agan, Martin	61	45	49 Blauvelt Ave. Bergenfield, NJ 07621	12/29/72	12/29/72	"
Jentzen, Frederick	61	45	283 Throgs Neck Blvd. Bronx, NY 10465	12/31/72	12/31/72	"
Wider, Edwin	55	39	133 Walnut St. Seymour, CT 06483	1/15/63	1/31/63	"
Saunders, Winfield	58	32	3690 Pinecrest St. Sarasota, Fla. 33580	1/15/64	1/31/64	None
Lowell, Albert	60	27	6810 Oakhurst Dr. Tarpon Springs, Florida 33589	10/5/65	10/29/65	44 Wks. Salary
Klager, Roy	60	43	1325 S.W. 21st Way DelRay Beach, Florida 33444	9/30/65	9/30/65	3 Mos. Lv. w/Pay
Munch, Gerald	60	36	125 Cocoa Ave. Indialantic, Florida 32903	2/9/65	2/26/65	None
Noel, L. T.	60	43	1132 S.W. 13th Dr. Boca Raton, Fla. 33432	8/25/66	9/30/66	1 X Ann. Salary
Higgins, Edward	60	46	184 Belmont Pkwy. Hempstead, NY 11510	6/30/66	7/29/66	"

A5

Hoerning, Michael	61	47	2011 N. 53rd Ave. Hollywood, Fla. 33021			1 X Ann. Salary (Died)
Nashold, Glenn	61	34	142 Louise Lane San Mateo, CA 94403	3/10/66	3/31/66	"
Carr, Raymond	61	36	P. O. Box 202 Edenton, NC 27932	1/13/66	1/31/66	"
Johnson, John	60	45	7211 Bradford Dr. Tarpon Springs, Florida 33589	12/13/65	12/31/65	"
Brown, William	59	40	Box 8 Harborcreek, PA 16421	12/14/66	1/31/67	"
Bramlett, Teddy	55	37	4035 E. Devonshire Avenue Phoenix, AR 85018	10/31/67	10/31/67	1 Yr. Lv. w/Pay
Embser, Earl	60	36	130 S. W. 57th Cape Coral, Fla. 33904	4/4/68	4/30/68	1 X Ann. Salary
Schenck, Alden	60	42	Box 142 So. Freeport, Maine 04078	5/6/68	5/31/68	"
Muller, Alexander	60	42	2 W. Nixon Rd. Holiday, Fla. 33589	5/3/68	5/31/68	"
VanRiper, Charles	60	40	801 Sandpiper Dr. Lanoka Harbor, New Jersey 08734	5/31/68	6/30/68	"
Reiland, Pierre	60	45	403 Stonewood Ave. Rochester, NY 14616	1/15/69	2/1/69	"

A5

Bollman, Rudolph	61	33	Shelter Island Ctr. Box 89 Shelter Island, NY 11964	3/31/69	3/31/69	1 X Ann. Salary
Parks, John	60	42	1615 Ramblewood Rd. Baltimore 12, MD	3/10/69	4/1/69	"
Hyer, E. Donald	61	43	5671 Eichen Circle Ft. Myers, Fla. 33901	6/23/69	6/30/69	"
Franke, Walter	61	38	49 Lyons Place Westwood, NJ 07675	8/1/69	8/1/69	"
Avy, William	61	40	263 Alameda Dr. Brick Town, NJ 08723	7/22/69	7/31/69	"
Giere, Albert	56	39	51-A Emerson Lane Jamesburg, NJ 08831	6/20/69	7/31/69	"
Egbertson, Kenneth	61	45	20 Maple Way Mountain Lakes, New Jersey 07046	8/1/69	8/29/69	"
McQuillen, Betty	55	32	2630 Westwood Blvd. Los Angeles, CA 90064	7/29/69	8/29/69	"
Ward, Robert	61	44	10-B Yorktowne Pkwy. Whiting, New Jersey 08759	11/7/69	11/28/69	"
Thomson, Paul	60	38	15 Gerthmere Dr. West Hartford, Connecticut 06110	11/14/69	11/30/69	"
Mason, Dudley	61	42	415 Tusculum Rd. Apt. D-3 Nashville, TN 37211	6/2/69	6/30/69	"

A5

Lokke, Morris	60	45	107-26 88th St. Ozone Park, NY 11417	10/8/70	10/8/70	1 X Ann. Salary (Died)
Burgess, Thomas	61	25	90 Bryant Ave. Apt. C-5A White Plains, NY 10605	7/30/70	11/30/70	40 Wks. Salary (+ 3 Mos. Lv. w/Pay)
Hirons, Marie	60	31	46 Vassar St. Garden City, NY 11530	11/18/70	11/30/70	None
Brodie, Thomas	61	42	1382 24th Ave. San Francisco, CA 94122	11/18/69	11/28/69	1 X Ann. Salary (Died)
Neal, Harold	59	36	3945 Park Lane West Palm Beach, Fla. 33406	1/15/69	1/31/69	" (Died)
Fox, Alfred	60	43	R. D. #2 Box 185K Absecon, NJ 08201	5/1/70	5/29/70	"
Olsen, Iver	57	40	629-77 Street Brooklyn, NY 11209	3/10/70	3/31/70	"
Stephenson, Charles	60	41	19417 Gulf Blvd. F106 Indian Shores, Fla. 33535	12/17/69	12/31/69	"
Varvaro, Salvatore	61	47	154 Laurance Lane Ridge, Long Island, NY 11961	4/8/70	4/31/70	"
Parker, Charles	60	42	c/o Harmon 73-50 Springfield Blvd. Bayside, NY 11364	3/6/70	3/31/70	"

Unser, William	56	39	63 Larkspur Ave. Merrick, NY 11566	5/6/70	5/29/70	1 X Ann. Salary
Robertson, Ralph	61	31	16563 Sambroso Pl. San Diego, CA 92128	2/6/70	2/27/70	"
Phillippsen, Henry	61	45	RD-2 Box 456 Rensselaer, NY 12144	10/21/70	10/30/70	"
Schultz, Edwin	61	44	219 W. Madison St. South Bend, IN 46601	6/2/70	6/30/70	"
Ithan, Harold	60	40	7 Brookston Dr. E. Holiday, Fla. 33589	3/31/71	4/21/71	"
Wehner, Charles	61	45	36 Lymwood Dr. Valley Stream, NY 11580	5/31/71	5/31/71	"
Evers, William	60	42	16 Willow Dr. Apt. 8A Ocean, NJ 07712	4/28/71	4/30/71	"
Falkenstern, Herbert	59	40	273 Hudson Ave. Norwoods, NJ 07648	2/8/71	2/26/71	"
Hand, Matthew	60	43	143 Salem Dr. Beacon Hill New Port Richey, Fla. 33552	9/30/71	9/30/71	"
Forrest, Edwin	61	45	30 Hillside Ave. Wollaston, MA 02170	4/30/71	5/25/71	"
Krakora, James	59	41	21831 Pinto Lane Leavenworth, WA 98826	1/29/71	1/29/71	"

Attmore, Howard	57	39	3840 97th Ave. N. Pinellas Park, Fla. 33565	9/30/71	11/30/71	1 X Ann. Salary
Abels, Joseph	61	46	21 Derby Street Valley Stream, NY 11581	12/30/71	12/31/71	"
Carlson, Edwin	60	41	9701 High Drive Leawood, Kansas 66206	12/31/71	12/31/71	"
Dunn, Philip	60	43	23 Austin St. Valley Stream, NY 11580	12/15/71	12/31/71	"
Malone, John	61	37	Box 1203 Clemson, SC 29631	12/31/71	12/31/71	"
Pulvermacher, William	58	41	45-35 44th St. L.I.C., NY 11104	12/31/71	12/31/71	"
Hewitt, William	61	46	131 Cornwell Ave. Williston Park, NY 11596	1/31/72	1/31/72	"
Ashworth, George	61	44	253 Milford Ave. New Milford, NJ 07646	3/31/72	3/31/72	"
orry, Raymond	60	41	90-16 208th St. Queens Village, NY 11428	6/30/72	6/30/72	"
Englesbe, Carolyn	60	41	190 Grove St. Somerville, NJ 08876	2/29/72	2/29/72	None
Cocuzza, Salvatore	61	46	20-14 Himrod St. Ridgewood, NY 11237	3/31/72	3/31/72	1 X Ann. Salary

Barrett, Duncan	60	37	16117 5th St. E Redington Beach, Fla. 33708	6/30/72	6/30/72	1 X Ann. Salary
Hardy, Bernard	61	46	14 Stuyvesant Oval New York, NY 10009	7/28/72	7/31/72	"
Nielsen, Oscar	61	46	36-24 Bell Blvd. Bayside, NY 11361	6/30/72	6/30/72	"
Bletsch, Arthur	60	42	7 Pepperidge Lane East Moriches, NY 11940	1/31/72	1/31/72	"
Peters, Oscar	60	43	60 Homestead Rd. Toms River, NJ 08753	3/31/72	3/31/72	"
Thompson, Elizabeth	60	41	P. O. Box 1586 Vineyard Haven, MA 02568	5/31/72	5/31/72	"
Alexander, Arnold	60	31	101 Clay Circle Brick Town, NJ 08723	8/31/72	8/31/72	"
Wolff, Walter	60	46	3814 Waterbird Dr. Colonial Hills New Port Richey, Fla. 33552	5/31/72	5/31/72	"
Toell, George	60	43	446 Prospect St. Midland Park, NJ 07432	6/30/72	6/30/72	"
Schwab, George	61	43	139 West Indian Lake Millerton, NY 12546	4/19/72	5/31/72	"
Coddington, Lawrence	61	45	Holiday Garden Estates 2313 4th Street New Port Richey, Fla. 33552	1/10/72	1/31/72	"

A5

Becker, Andrew	61	44	116 Henry St. Huntington Station, NY 11746	3/31/72	3/31/72	1 X Ann. Salary
Garborini, John	61	46	1827 W. 11th St. Brooklyn, NY 11223	9/29/72	9/29/72	"
Jenkusky, Frank	61	35	9805 74th Ave. Forest Hills, NY 11375	9/8/72	9/29/72	"
Gelardi, Albert	61	46	12 Martha Court Centerport, NY 11721	9/29/72	9/29/72	"
Quarles, Lillian	43	21	740 Ave. B, S.W. Apt. A Winterhaven, Fla. 33880	2/28/64	3/18/64	None
Froebig, W.	49	31	1719 Princeton Dr. West Wantagh, NY 11793	9/24/65	10/7/65	None
Ramm, Alice	44	23	5130 S.W. 3rd Ave. Cape Coral, Fla. 33904	5/28/65	6/11/65	None
Cefola, C.	53	21	P. O. Box 304 Lincolndale, NY 10540	9/10/65	1/31/66	32 Wks. Salary
Heulbron, Lillian	42	22	225 E. 36th St. N.Y.C., NY	4/28/67	5/23/67	None
Brion, John	48	22	33 Laurel Drive Lindenhurst, NY 11757	3/21/69	4/18/69	None
Cleary, Raymond	48	27	8 W. Revere Drive Dumont, NJ	6/20/69	7/18/69	44 Wks.

A5

Belfi, Dorothy	48	26	45 Park Ave. Passaic, NJ 07055	10/3/68	6/20/69	None
Laible, Robert	42	20	70 Shadylawn Dr. Madison, NJ	6/1/70	6/25/70	None
Shrene, MaryAnn	47	21	Raderville Route Casper, WY 82601	3/31/72	4/27/72	20 Wks.
Leo, Beatrice	47	28		1/7/72	1/21/72	None
Durso, Lillian	37	20	30-02 72nd St. Jackson Heights, NY 11370	10/10/67	10/10/67	28 Wks. Salary

A5

(WHEREUPON, the case was called.)

THE COURT: Have you explored the possibility of compromise?

MR. SILSDORF: Made many inquiries, Your Honor, on behalf of Plaintiff and was told by the Defendant that there are no funds available for the Plaintiff.

MR. CARLEY: Your Honor, I have no authority to settle at this time. I believe that the trial will take not more than one day, and the defendant is perfectly justified in proceeding to trial.

THE COURT: All right.

MR. SILSDORF: Your Honor, I marked up a copy of the complaint, which is being marked pleadings, if that will be of any assistance to you.

Your Honor, this is an action by the plaintiff who is a resident of Old Greenwich, Connecticut, and was employed by the defendant, Mutual Life Insurance Company of New York for approximately thirty-six years. Mutual Life Insurance Company of New York, in addition to other retirement benefits, had also a termination allowance plan, which is attached to the last page of the complaint as Exhibit A, and which provides basically that employees with ten or more years of completed service who had not reached the age of 62, and who terminated voluntarily or otherwise for any reason

except death, disability, retirement or lay-off, may at the -- the quoted words are "solely at the discretion of the company" be given termination allowances of up to", and then there is a graduated scale, depending on length of employment with a maximum allowance of 52 weeks salary. I don't think there is any question that with 36 years the company could have given him up to 52 weeks of salary. The claim goes on to say that such allowance will be considered only for two possibilities, when the employee's position can be abolished or the salary savings from the replacement at a lower salary are sufficient to recover the amount of the termination allowance within five years, and then the second condition which we don't think is applicable here, when in the opinion of the company it is desirable to encourage the employee to seek employment elsewhere, retire early, or engage in field underwriting.

Mr. Hollander had the title of Assistant General Counsel of the defendant Mutual Life Insurance Company of New York. I mentioned earlier he had been with them 36 years, and at the time of his retirement he was 59 and a half years of age. In other words, Your Honor plaintiff met all of the requirements of the plan, as we'll show, including that they could have saved much more than his annual salary with the termination allowance. I should say he retired as of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

December 1, 1972, two years prior, in 1970, he went to his immediate superior, the Vice President and General Counsel of Mutual of New York, and told him that he wished to retire and he made inquiry as to the termination allowance. That individual, who I understand will testify here, is a man named Samuel Cantor.

Mr. Cantor said in effect, "We don't want you to retire, we need you here," and, "what is this all about?" And Mr. Hollander said, "I have been commuting for 30 years from Connecticut to here, I'm tired, and I want to get out of here already."

And they talked him into staying, and they worked something out with him whereby they gave him four months extended vacation or they let him go for four months with full pay, and combined with his accrued vacation and sick leave and so on, he was able to take six months off. The only condition being that when he returned, he had agreed to -- he had to agree to work for them at least one year more. He took his six months, made a trip around the world or something with his wife, and came back and stayed another seventeen or eighteen months with them. At that time he felt he had now given his all for dear old Mutual Life Insurance Company of New York, 36 years, and he wanted to retire, and he put in for retirement, for the termination

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE
FOLEY SQUARE. NEW YORK. N.Y. - 791-1020

allowance pay.

Again, Mr. Samuel Cantor said no. He tried to pursue it without success and retired. He felt that he had been discriminated against unfairly, that other employees situated as he, with long years of service and so on, had been granted it, and that's what this case is all about, Your Honor.

One more statement --

THE COURT: What would have been his rights under the pension plan?

MR. SILSDORF: He got all of his rights, Your Honor, under the pension plan. He got everything he was entitled to, with the exception of this. The only thing that we're suing for here, we're not suing for the one-year salary, Your Honor, we're giving the company credit for the four months leave they gave him in 1970. Mr. Hollander felt that was the fair thing. They did pay him for those four months, and so he is suing basically for the eight months of termination allowance pay.

THE COURT: Which amounts to how much?

MR. SILSDORF: About $21,000 and there are certain fringe things because the way they did it was, as I understand, they kept him on the payroll for one year more, or he had the option anyhow and they paid him all the fringe

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

benefits, the social security, and his retirement based upon the last five years. This would be included in the five-year computation. And there is set forth at the end, I don't think there -- I don't know how much they come to but they are sort of what we call fringe benefits. That is basically the plaintiff's case, Your Honor.

THE COURT: Was there a pretrial order in this?

MR. SILSDORF: Without any order or without the Court, Mr. Carley and I met together last week and we pretty much agreed on the basic facts of this case and so on.

THE COURT: Did you put it on a piece of paper?

MR. SILSDORF: No, we didn't put it on a piece of paper, Your Honor. I think we had an understanding.

THE COURT: I think you can stipulate to most of those facts, can't you?

MR. SILSDORF: Yes.

MR. CARLEY: I don't think you will find any difficulty.

THE COURT: Do you want to put the stipulation on the record, or after I hear what you have to say?

MR. CARLEY: I prefer if we could, Your Honor, to go through plaintiff's case. I think by that time

we will have probably agreed on all the facts. I can't think of any objections I'm going to have to any evidence. We've been through it.

THE COURT: Do you want to open?

MR. CARLEY: Yes, I would like to make a brief opening statement, Your Honor.

May it please the Court, my name is John H. Carley of the firm of Rogers & Wells, representing the defendant herein, Mutual Life Insurance Company of New York.

In our view, the case is a rather simple one a deals with subsection two of the termination allowance plan, which is attached to the complaint and as to which there is no dispute.

Where we differ is in some of the interpretations placed on it by the plaintiff, but suffice it to say that it is the view of the company that the termination allowance plan bore no legal relationship whatsoever to any retirement or pension plan as contended or as will be contended, in that the terms of that plan under the law oi this jurisdiction, govern the interpretation of that plan.

If Your Honor recall, defendant made at the outset of this case motion for summary judgment, which was denied without prejudice, subject to discovery. I believe in that case, Your Honor relied very heavily on a First

A-5-F

Appelate Division decision in the State Courts of New York, which said in essence that one cannot rule in the abstract but should have some practical construct of how a plan, regardless of it's terminology, actually functioned. With that in mind, the parties undertook to take discovery. I believe that the evidence shall establish quite clearly that during the ten-year period, 1963 to 1972, 218 persons were considered for a termination allowance plan, and 132 received it, or approximately 60%.

In addition to that, we shall produce evidence through competent testimony discussing how the plan functione and in essense it shall demonstrate that crucial to the award of termination allowance was the approval of the department head, in this instance, the testimony I believe shall be undisputed that the plaintiff herein made an initial request in the fall of 1970 for a termination allowance , which was refused by his department head, Mr. Samuel Cantor, who will testify as to the circumstances of that.

At the time plaintiff requested that he take early retirement, and also mentioned that he wished to take another job. I will not go in at this point to the resolution of that, though I believe the facts in this that matter will be undisputed also, only to say that the plaintiff, without forewarning, in the fall of 1972, after having

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

returned to work, announced to the defendant that he was taking early retirement, and he had located another job closer to his home.

The facts I believe shall demonstrate that the plaintiff did indeed take early retirement effective December 1, 1972, thereafter was employed by a company known as Computer Investors Program, in Stamford, Connecticut, until February 22, 1974 at a salary approximately two-thirds of what he was earning while employed by the defendant.

For all of these reasons, it is our firm position that the plaintiff was not entitled, as a matter of law, to a termination allowance, and even in the circumstances as alleged by the plaintiff, there is no evidence that I think can be produced and no competent legal authority to convert a plan which specifically states that any decision shall be solely at the discretion of the company into a plan which vests legal rights awarding one year's salary to an employee who elects to retire early and seek other employment.

May I, at this time, Your Honor, hand up a trial memorandum?

MR. SILSDORF: I likewise, Your Honor.

C A R L F. H O L L A N D E R, called as a witness in his own behalf, having been duly sworn by the Court, testified as follows:

A-5-H

DIRECT EXAMINATION

BY MR. SILSDORF:

Q Mr. Hollander, you are the plaintiff in this action?

A I am.

Q Where do you reside, Mr. Hollander?

A Reside at 6 North Ridge Road, Old Greenwich, Connecticut.

Q How long have you resided there?

A Over 29 years.

Q That's continuously up to the present time, is that correct?

A That's correct.

MR. SILSDORF: Your Honor, in the complaint as I have marked it up for you, I believe, the first nine allegations, first nine paragraphs have all been admitted by the defendant, and I won't take the witness through those, except they denied knowledge or information as to his Connecticut residence.

THE COURT: One to nine are then stipulated for the purpose of this trial?

MR. CARLEY: I'm sorry, I can't hear the plaintiff's counsel. What is it?

THE COURT: One to nine, paragraphs one to nine, are they stipulated for the purpose of this trial?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

MR. CARLEY: Yes, Your Honor.

THE COURT: All right.

MR. SILSDORF: Also in paragraph ten, they admit in the form of a denial except they admit that the plan of which is a copy attached to the complaint as Exhibit A was in the manual until October 1, 1973. And there was brought out, I think Mr. Carley will admit the plan has been in existence, this termination allowance plan, which is the subject of this suit, since 1958. Is that correct, Mr. Carley?

MR. CARLEY: Your Honor, it's my understanding that the termination allowance plan was originated in 1955, and from time to time has been amended. The subject termination allowance which should govern this proceeding is the one attached to the complaint which is effective July 1, 1968. There was one significant change in prior termination allowance plans, which I don't think affects the issues, but it does affect the credibility of the witness.

THE COURT: All right. Then where is the plan?

MR. SILSDORF: It's attached to --

THE COURT: Never mind where it's attached. Get it out and mark it for identification.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

MR. SILSDORF: Your Honor, I offer in evidence a copy of the termination plan, effective July 1, 1968.

MR. CARLEY: Just the top sheet, I think. No objection.

X (Plaintiff Exhibit One Received.)

DIRECT EXAMINATION
CONTINUED
BY MR. SILSDORF:

Q Now, Mr. Hollander, in 1972 who was your superior at Mutual of New York?

A My top boss in the law department was Samuel C. Cantor, whose title was then Vice President and General Counsel.

Q What was your title at the time?

A Assistant General Counsel.

Q And did you have any conversation with Mr. Cantor in 1972 regarding the subject matter of this action?

A Yes, I -- did you say '72 or '70?

Q '72.

A '72, I don't think I had any conversation about this subject. I think we exchanged memoranda.

Q Then let's go back to 1970. Did you have a conversation with Mr. Cantor in 1970?

A Yes, I did.

Q And will you tell His Honor the conversation?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

A Well, I had been under a lot of pressure, and commuting --

Q Just tell us what you told Mr. Cantor.

A That's what I told him.

Q You told him that? All right, I'm sorry.

A I had been under a lot of pressure, I was sick and tired of commuting, and I was then, in 1970, I was then over 55, I was at a stage where I was qualified for retirement on the early retirement provisions of defendant's pension plan called the security plan. I said to him, I said, I'd like to get -- well, actually I said I'd like to -- I'd like to be kept on the payroll for a year, get the termination allowance as I understand just about everybody gets, but since I'm working on an important piece of litigation, on a question regarding premium taxes, I'd be glad to come in and work subject to your recommendations to work on the case.

And he said "Well, Carl, I don't know about it, I'm going to have to look into it".

So, several weeks later, he called me back in again, and said, "Well, we're sorry, we can't do that for you. We know you have worked hard and we know that you'd like to get some time off to travel and get rested up and come back."

Well, we worked out the details of that over the next few weeks. That was around November, I think it was about

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

the middle of November, and for one reason or another, it was considered good that I stay until the first of the year, and then we went off.

I took the trip through Western Europe, came back, came back to work on June 28 and I stayed there for seventeen or eighteen months, although I had undertaken only to come back for one year.

At the time I left in 1972, I renewed my request for a termination allowance. I had hopes that maybe they'd change their mind in the meantime. In the period of eighteen months I hoped that something might take place. But I was informed that again I was not going to get it.

Q Did you then have any correspondence with Mr. Cantor in 1972?

A Yes, I wrote him a memorandum explaining why I thought it should be granted, and he wrote me a short memorandum saying that he didn't think it should be. I wrote a further memorandum asking that it be -- the question be submitted to the President and Chairman of the Board of Trustees of the defendant, and I was then called up to the office of Richard Frick, who was -- the title was then Executive Vice President, and he had a memorandum and he claimed that there were other instances where someone similarly situated to me had not gotten them. I was not permitted to see the memorandum, but he told

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

me that it just couldn't be done, and I really had no complaint. I argued rather strenuously. It was a very -- it was a very -- it was cordial, has always been. I have a high regard for him, and my disagreement was purely on the question of my entitlement. I had felt that over the years I had been familiar with the terms of the plan. I talked to employees of the company who --

THE COURT: What question is he answering now? Would you mind telling me?

MR. SILSDORF: It was still the same question about his conversations with Sam Cantor in 1972.

THE COURT: This has nothing to do with conversations with Cantor. He is talking about his personal feelings.

MR. SILSDORF: Right.

We served interrogatories, Your Honor, and we received replies, and I want to refer to them now.

THE COURT: Are you going to use this witness to do that?

MR. SILSDORF: Yes.

THE COURT: All right. We'll take a five minute recess and give you a chance to get your papers together.

A-11

(Recess taken.)

****

(Mr. Carl F. Hollander resumes the stand.)

MR. SILSDORF: Would you please be good enough to give to His Honor the answers to the plaintiff's interrogatories?

(Documents handed to the Court.)

MR. SILSDORF: Your Honor, that interrogatory required the listing of each -- interrogatory number seven I'm calling your attention to, Your Honor, and it required the listing of each employee of the defendant who qualified for the termination allowance plan, the only difference being that the question called for twenty years of service. The pertinent part is subdivision D. We wanted to know whether or not there was a termination allowance paid. Now, their reply to that is Tab A connected to the interrogatories, in which they listed all the employees with twenty or more years of service, and how much termination allowance they received by the end of 1972.

Now, I want to ask Mr. Hollander some questions regarding his tabulations of this Tab A.

MR. CARLEY: Let me just object for the record, Your Honor. I have no objection to the admission of that answer. I do have great objection to Mr. Silsdorf's characterization. I would note that Tab A constitutes, at the request of plaintiff, a response to his interrogatory.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

THE COURT: Let's get this straight. The only thing that I am allowing is not his remarks but the only thing I am looking at, he is only calling my attention to interrogatory seven and Tab A. That is all I have as far as evidence is concerned.

MR. CARLEY: Fine, Your Honor.

THE COURT: Everything else, the remarks are not pertinent to me, they are just introductory remarks.

MR. CARLEY: I just didn't want the Court to be misled in understanding that it does not comprise all persons who were considered for the termination allowance but a selected group asked for by Mr. Hollander and compiled by the defendant in response to his specific request.

MR. SILSDORF: I did make the remark, Your Honor, that the request in the interrogatory requested employees with twenty years or more service. Under the plan any employee with ten years or more service would be eligible to be considered for this termination allowance, but our interrogatory was for twenty years or more service, and so on.

Let me ask a preliminary question of Mr. Hollander.

DIRECT EXAMINATION
CONTINUED
BY MR. SILSDORF:

Q In your years of service with the company, and

1 considering your position, and since the plan went into
2 effect in 1958, was there any understanding among the employee
3 or did you make any inquiry among your fellow workers and so
4 on in the company or the officials as to who was granted this
5 termination allowance, and under what circumstances? Answer
6 yes or no.
7 MR. CARLEY: I object to the form of that,
8 Your Honor.
9 THE WITNESS: Yes.
10 THE COURT: Sustained. Strike out the
11 answer. It would be total hearsay. What has that got to do
12 with it? How do you prove that through hearsay testimony?
13 MR. SILSDORF: Well, these are employees
14 of the company.
15 THE COURT: How can he cross examine?
16 MR. SILSDORF: No.
17 THE COURT: They are not here, are they?
18 MR. SILSDORF: No, Your Honor, they are
19 not.
20 THE COURT: All right, then don't get into
21 hearsay. I am not going to take any hearsay on this.
22 Q As to this Tab A, Mr. Hollander, will you please
23 tell me, tell His Honor, how many employees are listed on
24 Tab A who had twenty years or more service with the company
25

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK N.Y. - 791-1020

who were at least fifty-five years of age at the time they requested termination allowance?

A In that category, there were eighty such employees.

Q And as shown on Tab A, how many of those eighty received termination allowances?

A Seventy-five.

Q Did you calculate what percentage that comes to?

A I calculated it as 93.75%.

Q Mr. Hollander, did you also calculate -- let me ask you this -- I think I'll reserve that.

All right, after you gave notice of termination, of your intention to terminate in 1972, what if anything happened in the law department of the defendant corporation?

MR. CARLEY: Objection, Your Honor.

THE COURT: Regarding your position?

MR. CARLEY: Objection, Your Honor.

THE COURT: What's the relevance of that?

MR. SILSDORF: One of the criteria of the plan, Your Honor, is that they will grant termination allowance whereby the employee terminating his employment, there will result a saving to the company, and I want to bring out that by his --

THE COURT: I will take it subject to connection.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

A Well, they did some reorganization of the titles in the in my branch of the law department. No one at that time took over my title, Assistant General Counsel.

Q All right. Was there a directive issued by the law department, by Mr. Cantor?

A Yes, a memorandum went around showing a new organization chart.

MR. SILSDORF: I will offer in evidence, Your Honor, this memorandum from Mr. Cantor of October 13, 1972 together with the chart which accompanied it.

MR. CARLEY: No objection.

X (Plaintiff's Exhibit 2 Received in Evidence.)

Q In this chart, Mr. Hollander, and this memorandum of Mr. Cantor, Exhibit 2, will you please refer to it and tell the Court as near as you can what distribution of your duties or your functions with the company was provided?

A To the best of my knowledge, my name does not appear on the chart because I had already announced my decision to leave, but, to the best of my knowledge, I believe that about 25% of my work would have gone each to Mike Kaplan, George Rodgers and Jeanne Cullinan Ray and about twelve and a half percent each to Clifford Ferguson and John Hughes. Those are the five employees whose names are mentioned on the response to interrogatories as the ones that took over my work

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

MR. CARLEY: Objection, Your Honor. I'm a little late on this but I would move to strike the answer. There is no foundation as to what he did and there is no foundation for his testimony as to how he knows whatever functions he held were transferred to those employees.

THE COURT: Yes, the answer is conclucionary Sustained.

MR. SILSDORF: I ask Your Honor to hold it for a minute and call your attention to interrogatory number eight, Your Honor. It regards what attorneys or law assistants took over any of the plaintiff's duties and responsibilities during the one year period starting with December 1, 1972 You will see there the defendant listed five attorneys who took over functions of Mr. Hollander, commencing December 1, 1972, the date he terminated with the company.

MR. CARLEY: May I be heard?

THE COURT: - No, I sustain the objection. This is conclusionary on his part and here again we are in the area where he is denied the right of cross examination. His testimony as to what these people did would be hearsay.

MR. SILSDORF: To repeat, Your Honor, interrogatory number 8 gives the annual salary rates and titles for the following members of --

THE COURT: But you are drawing a conclusion

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

from that that they took over his duties. That isn't what the interrogatory asks.

MR. SILSDORF: The interrogatory does ask who took over any of the plaintiff's duties and responsibiliti during the one year period starting with December 1, 1972, Your Honor, and they have answered it, the name of five attorn who took over his duties from December 1, 1972.

THE COURT: I will allow that answer to stand.

MR. SILSDORF: I also call Your Honor's attention to the salaries supplied in the answer to interrogatory number 8 of five attorneys in the law department of the defendant, ranging from $14,000, round figures, to $28,500 per year.

Q What was your salary at the time you terminated on December 1, 1972, Mr. Hollander?

A $32,800.

MR. SILSDORF: I have to inform Your Honor of the necessary conclusions which have to follow from the two pieces of testimony, that the average -- there is no way you can do it except average the five salaries which come to about $23,000 per year as opposed to his $32,000. So there would be a saving, assuming his functions were allocated to on of these five employees, there would be an average salary

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

saving of about $9,000 per year which, under the termination allowance plan would easily recoup his salary in the five year period mentioned in the plan and that was the purpose of offering that, Your Honor.

THE COURT: That is a matter of argument. Suppose you develop your testimony at this time.

Q Were you ever informed by Mutual of New York or any other source whether or not your title was ever filled by Mutual of New York?

A No, I read in the issue of the company newspaper that the title of Assistant General Counsel was given to Michael Kaplan about ten months later.

Q Is that on or about October 1, 1973?

A That's correct.

Q And the newspaper or the house paper you refer to is the Mutual of New York News?

A MONY News.

THE COURT: Is that disputed?

MR. CARLEY: No, Your Honor.

THE COURT: Whereas the sense? He agreed that that happened.

What was his salary, can you agree about that?

MR. CARLEY: No dispute, $32,000 --

THE COURT: The same as he was given?

MR. CARLEY: You mean Mr. Kaplan? I can't give it to you off-hand.

MR. SILSDORF: Mr. Kaplan is in Court and he can tell us right now.

MR. CARLEY: This is Mr. Kaplan.

MR. SILSDORF: Mr. Kaplan is one of the persons mentioned in interrogatory eight and there on December 1, '72, they list his salary as $28,500.

MR. CARLEY: Mr. Kaplan informs me that his salary at the time he got the title was approximately $32,000.

MR. SILSDORF: That was also ten months later, Your Honor.

Q Mr. Hollander, had you received periodic increases in salary up until the time of your termination?

A Maybe once every two or three years. I got two in my last three years.

Q Was there any complaint made to you about your performance in your work?

A No.

Q And have you ever had any trouble with the company as far as you know in the last years of your employment there?

A Well, for quite a period of years there was one person wh was my immediate boss that made things pretty rough on some of

us and I often -- the thought crossed my mind that I would sure like to get out of here but I had the early retirement benefits I was relying on and I was also thinking about the termination allowance which comes to about three years of the early retirement benefits and there was too much to lose to get out certainly before age 55 and around age 55 things started to get a little better and I decided I would hang on a little longer. Then that led up to the 1970 conversation with Cantor.

Q When did you first become aware of the defendant's termination allowance plan?

A Oh, I would say not too long after it's adoption. I had a copy in my possession for a good many years.

Q We have established it was adopted in 1958. When did you first become aware of it? You said not too long after

A It was not too long after that.

Q Are you talking about days or years?

A I would say within months after it, I think I had seen a copy.

Q Was this publicized by the company, this termination allowance plan?

A It was set forth in the supervisor's manual which is available for inspection by employees to determine their rights. There was an article in the company newspaper some-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

time in 1968. It was also mentioned in the superintendent's insurance triennial examination report. I don't remember when, but it was somewhere in the middle sixties.

Q You mentioned you had some unpleasantness, and I am characterizing, with a supervisor of yours?

A That's correct.

Q And I think you mentioned that you considered possibly leaving the company because of that?

A Well, I didn't think about it too hard because I had too much to lose if I left before my early retirement benefits came into being. And then just around -- let's see, that was around the middle 60's there and they reorganized things a little bit and changed the personnel around so that my situat was considerably improved. Then the thing that was getting me was the commuting and the pressure.

MR SILSDORF: I would like to offer into evidence, Your Honor, a portion of this house newspaper for July 1, 1978, pertaining to the termination allowance plan.

MR. CARLEY: No objection, Your Honor.

X (Plaintiff's Exhibit 3 Received in Evidence.)

MR. SILSDORF: I have no further questions at this time.

CROSS EXAMINATION

BY MR. CARLEY:

A-20

Q Mr. Hollander, let me direct your attention to the defendant's answers to the interrogatories that you gave the Court.

Directing your attention to Tab A, Mr. Hollander -- I want to direct your attention to Tab A and make sure I have your testimony correct.

If I understood you correctly, you said that there were eighty persons listed therein and only five who did not receive the termination allowance?

A That is not exactly what I said.

Q My figure there is 13 and I would like you to clear it up.

A I said of the category of those 55 years of age or over but not 62 years of age with 20 or more years of service there were 80 such employees.

Q So that your testimony is not directed at every name which is on here but a qualification on this list which we have already said is a qualification of the entire experience of the plan, is that correct?

A That is correct. The last two pages of Tab A -- there are 12 employees under age 55,

Q In any event, there are more than five employees on this list who did not receive the termination allowance?

A That is correct.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

Q Let me direct your attention to page one of Tab A and ask you if you knew a Winfield Saunders?

A Yes.

Q What was Mr. Saunders' position at the time you knew him?

A Associate General Counsel.

Q Of the law department?

A That's correct.

Q He was employed in the same department as you were, is that correct?

A That is correct.

Q Could you read to the Court the information contained respecting Mr. Saunders without adding his current address? Let me rephrase that.

THE COURT: You can read English, read it.

MR. CARLEY: The record shows Mr. Saunders was 58, had completed 32 years of service and retired in 1964 and received no termination allowance at all.

Q How about Mr. Gerhard Munch who is listed three down from that, did you know him?

A Can I confer with counsel?

THE COURT: No, not now. What are you going to do, confer in between your testimony? You are a lawyer. You mean you are going to say every time something

****

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

comes up you are going to step down and confer with your lawyer while your on cross examination? Is that your feeling of the way it should be done?

THE WITNESS: They refused us certain information regarding Sunders and Munch and I just wanted to raise the question as to whether they can go into it if they refused us the opportunity to go into it.

THE COURT: You can consult with your lawyer when you are through with the testimony and he can recall you. I am not going to have two lawyers running this case at one time.

THE WITNESS: You are entirely right, Your Honor.

MR. SILSDORF: I should point out my client has never been in Court and although he has been a lawyer for 36 years --

THE COURT: It doesn't make a difference. The point is if I were to take the stand and I have taken the stand, I would do the same thing as he does. The worst witnesses in the world are lawyers, absolutely the worst, and that includes me.

Q Is that true, you have never been in Court?

A No, Arthur has it wrong. I have never testified in Court before.

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE
FOLEY SQUARE. NEW YORK. N.Y. - 791-1020

Q But you have tried cases?

A I have tried cases.

Q So you are familiar with the procedures in a courtroom?

A Sure.

Q Let me ask you about Mr. Munch who is also listed on page one, three below Mr. Saunders. Did you know Mr. Munch?

A Yes, I did.

Q What was his title at the time?

A Associate General Counsel.

Q In the law department?

A Right.

Q The same department as you were in?

A Right.

Q The information therein states that Mr. Munch, after 36 years of service at the age of 60, retired in 1965 and received no termination allowance at all.

Do you know Richard Jenks?

A Yes.

Q And Mr. Jenks was employed where?

A He was employed in the law department. His title I believe was Counsel.

Q When did he retire, approximately?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

A He retired maybe six months after I did.

Q And did he receive the termination allowance?

A No.

Q In fact, at the time --

MR. SILSDORF: I object to any questions as to what occurred after his retirement.

THE COURT: You are stating as a party to the case here that this is a custom and practice which was indulged in by this company and that it was a custom and practice which allowed him to rely upon it and I would allow it. It's a continuation of what they did before and I will allow it. Overruled.

MR. CARLEY: I will show the connection to this, Your Honor.

Q Let me skip out of order of what I wanted to do, Mr. Hollander, and show you a copy of a document dated October 17, 1972 purporting to be from you to Mr. Cantor with the subject of request for reconsideration of payment to me of termination allowance plan under company's termination allowance plan, and ask you if you can identify that document.

A That was my request for reconsideration of the termination allowance and giving the reasons why I felt that I should get it.

MR. CARLEY: I offer this in evidence.

X

(Defendant's Exhibit A received in evidence.)

Q Just one question for now on this document.

Let me direct your attention to page 2 and the first full paragraph start with the sentence "I was the first one and only one of two in the recorded history of the plan", and I ask you to read the first sentence that I have just referred to.

Weren't you referring to Mr. Jenks?

A Yes.

Q You did know by October '72 he was not going to a termination allowance award?

A He had made a request which was turned down but he did not terminate at that time, he came back to work.

Q I agree.

Is it fair to say then that at least by October 17, 1972 there were three persons in the law department who had terminated or who had requested termination allowances and had not received them, namely Messrs. Saunders, Munch and Jenks, is that correct?

A That is what your data shows. They never confided in me and I don't know what else they might have gotten instead of termination allowance.

THE COURT: Indeed there is a fourth, is there not? Wouldn't that fourth be you?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

THE WITNESS: I guess.

Q In October 1970 didn't you request a termination allowance for Mr. Cantor and didn't he refuse it?

A Yes, he did refuse it at that time.

Q Let me ask you a little bit about what you knew of the termination allowance plan.

I believe you testified earlier that you first learned about it shortly after it's origin which is approximately 1955, is that correct?

A That is correct.

Q What were the basis of your understanding of that plan prior to your conversation with Mr. Cantor in 1970?

A Conversations with other employees, some of whom worked with the administration of the plan and others were simply long-term employees who had friends that they knew were getting it.

Q What were those conversations about? What did you discuss?

A We would discuss the fact that we couldn't think of anyone in a long service category, 55 or over that hadn't gotten it. We couldn't come up with any names.

Q So that your testimony is abundantly clear, I understood you on direct to say that almost everybody gets it. What did you mean by that?

A Just what I said, almost everybody gets it. I didn't know of any cases that hadn't gotten it, as indicated in my memorandum.

Q Was your understanding that everybody got it or that everybody except for certain people got it?

A Well, I didn't know of any exceptions is all I can say. There might have been some exceptions that I didn't know about, as there apparently were.

Q How would you describe your conversations with the employees that you discussed the subject with from 1955 to 1970?

A I don't quite understand the question.

Q Were they casual or deep, were they formed? What kind of conversations were they?

A Most of them were casual and some of them got more serious, particularly as I was getting to the time that after I asked the first time --

Q We are talking about the conversations prior to 1970, at which point you made a formal request of Mr. Cantor.

A Those were mostly relatively casual.

Q How about the quality of those conversations? How would you describe the information that you received at that point?

A It was just that several of us had the very definite

understanding that this was something that is being granted like an adjunct to the early retirement plan.

Q Would you describe the information as primarily hearsay or gossip?

A No, because two of my informants worked on the administration of the plan.

Q Mr. Hollander, do you remember being examined at a pre-trial deposition on January 17, 1977?

A Yes.

Q And do you remember at page 30 lines 2 through 7 or 9 being asked the following question and giving the following response? "Question: In so far as you are aware, was the information being passed to you by your sources largely based on hearsay, gossip, documents or what? Answer: I would say it was primarily hearsay, gossip, hearing it from terminating employees and people who knew them and so forth. It was not one hundred percent reliable. The record would have to speak for itself."

Did you give that testimony?

A Yes, I did, and I think the reason that it's that way is that even the two people who did work on the administration of the plan evidently didn't know the actions finally taken in some of those cases so it was not one hundred percent reliable.

Q And you didn't consider it one hundred percent reliable?

A No, I didn't consider it one hundred percent reliable.

Q How did you understand the plan to function?

A I understood that it functioned in a way which would result in terminating employees at least in the early retirement category, 20 or more years of service, 55 years of age and over, that they were getting it.

Q But you understood that somebody might not get it, did you not?

A I understood that as a possibility but none of us could come up with names of people who didn't get it.

Q Be that as it may, you never understood that everybody would receive the award, did you?

A I can't say I understood that everybody got it but my understanding was that just about everybody got it. I couldn't come up -- none of us could come up with names of exceptions.

Q Let me show you Plaintiff's Exhibit One in Evidence, which is a copy of the termination allowance plan and the terms thereunder, and let me direct your attention to sub-paragraph 2 and the third line and the use of the phrase discretion of the company. Let me ask you to review that.

A I have read it.

A-28

Q What did it mean to you?

A To me it meant that the company wanted to reserve the right to do anything it wanted to do and to protect itself in instances where they thought that perhaps the employee might have been guilty of misconduct or something. I did not directly work with the administration of the plan so I don't know.

Q Did you understand that the use of that term, and you are a lawyer, reserved the right of the company to refuse to make awards?

A That is so stated in the plan.

Q Then can we be agreed on the fact that you never at any time relied on an award because you understood that the company had the right to refuse to make such an award? Can we agree on that?

A I won't agree on that because even though they state on the plan that they rely on the right to refuse the award, they were not refusing it. Therefore, it was greatly to my surprise when they told me I couldn't get it. My understanding was the practice was to the contrary, that it was being paid.

Q Is it your testimony that your understanding of that term within the termination allowance reserved the right of the company to refuse to make an award?

A It so stated that it reserved the right to refuse --

Q I know what it states and the Court knows what it states but what is or was your understanding of the use of that term? You testified you were aware of the terms. You testified you had casual conversations. What I am driving at is your testimony of what was your understanding of the use of that term?

A I didn't have much of an understanding of how the term was used in that my understanding was that they were granting these allowances.

Q With respect to your deposition, page 30, line 10, and the initial question is with reference to the information that you had received. "Question: And you didn't rely on it for accuracy, did you? Answer: I relied on my general impression that it was grantable if salary savings could be shown. Question: By grantable, do you mean it was also ungrantable? Answer If the term of the plan purports to say that it could be turned down, yes."

Did you give that testimony, Mr. Hollander?

A Yes, I did.

Q Do you have any reason to change it at this point?

A No, the plan so states but my understanding was that they weren't invoking that clause that I knew of. We couldn' come up with any names of people that it had been invoked

against. Again I am talking about long service employees.

Q Isn't it a fact that your entire claim is based not only on the entire experience of the plan but a select group of employees?

A Certainly it's a select group of employees. Those that had given long years of service were given extra consideration, to the best of my knowledge.

Q Without regard to the terms of the plan, is it your position that if long years of service were given, the termination allowance had to be awarded?

A That is just about my understanding.

Q Your understanding or your position?

A My understanding and position.

Q Have you forgotten about Messrs. Saunders, Munch and Jenks?

A No, but nobody confided in us -- well, Jenks, yes. But Jenks was at a later stage of the proceedings after they had taken this position with respect to just a few lawyers. There were 75 other people who did get it.

Q Let me go to your conversation with Mr. Cantor. Do you recall approximately when that was?

A Very vividly. It was the early part of October and he had just come back from a trip to Europe, I believe, and I sort of caught him by surprise.

Q What did you say to him and what did he say to you?

A Well, I said that I had been getting worn down under the pressure of work and commuting and that I would very much like to take early retirement so I could travel and then I wanted to ask him to give me the termination allowance that I understood was being given routinely to people in my category and that I would like to get it in the form of salary continuance because I was working on a case involving the taxation by New York State of the cost of the companies fringe benefit plan and written the brief and argued in the Appelate Division and so forth and there were further proceedings being had in the case and I assumed I would come in from time to time and work on it and that would be the inducement for them or for the company to agree to it.

I would not have been surprised if they denied the salary continuance but I was surprised when they wouldn't give me the thing at all.

Q Mr. Cantor was the head of your department at that time?

A He certainly was.

Q Was this the first conversation you had with him on the subject matter?

A That is correct.

Q In other words, you had never had a conversation

that intimated before that you were thinking of early retirement?

A No.

Q What was Mr. Cantor's reaction in so far as you can convey it to the Court?

A He was very noncommital at the time. He said we will have to look into it. They looked into it for several weeks before he got back to me.

Q Did he agree to granting a termination allowance?

A No, as I said, he was very noncommital. He would say he would look into it.

Q What did he ultimately say? I take it there was more than one conversation?

A When he called me back in again he in effect said something to the effect that you are a valued, well-regarded employee, we don't want you to go and I am told that the termination allowance is only given to those we want to get rid of and that was not my understanding at all. I argued with him but got no place.

Q In point of fact, didn't you chose not to make an issue out of this rejected termination allowance at that point?

A I chose to make not an issue of it because I was getting time off to travel at full salary. I could come back and work

for a period with sort of recharged batteries, as it were, and then could go and look for another position and not have to come looking for a position after months of idleness when they say what is the matter, why can't this fellow get a job?

Q That brings me to another point. Did you in this initial series of conversations tell Mr. Cantor that one of the reasons you wanted to leave or elect early retirement was to locate another position?

A Not at that time, no.

Q But you had that in mind?

A I didn't have any definite ideas on that.

Q You just testified that you got what you wanted, which was time to travel and locate a position so you still had a job and other prospective employers wouldn't think you were unable to be employed.

A That is correct.

Q You had it in mind, did you not?

A I had it in mind that I did want to work a little more.

Q But you didn't tell Mr. Cantor that in 1970?

A No.

Q Why didn't you tell him?

A Well, my ideas were completely up in the air.

Q Are you sure you didn't tell him because you didn't think he would give you a termination allowance if you were

going to go out to get another job?

A I didn't have any such thought. I don't think it had anything to do with the situation.

Q I show you a copy of a memorandum from you to Mr. Cantor dated November 2, 1970 and ask you if you can identify that?

A Of course, I can.

Q Just identify it.

A All right.

MR. CARLEY: I offer that in eivdence.

MR. SILSDORF: No objection.

X (Defendant's Exhibit B received in evidence.)

Q Let me show you Defendant Exhibit B for identification and ask you if that correctly reflects your understanding of how your initial request for termination allowance was ultimately resolved?

A This of course was working out my arrangement for the leave of absence. It had nothing whatever to do with the termination allowance.

Q I understand your testimony to be that you asked Mr. Cantor for a termination allowance in October '70?

A That is correct.

Q And he ultimately rejected that request for grounds that you have already covered?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

A He rejected my request at that time for termination allowance and then we worked on the question of how much leave of absence they might be willing to give me.

Q The only point is that you did request the termination allowance, it was rejected but in it's place you received something and that memorandum reflects correctly your recollection of what you received?

A It was never stated that it was in it's place. It was just a method of getting me some time off, the inducement to get me to come back again and work some more.

Q Isn't the time off to travel what you wanted? Isn't that what you wanted?

A That is one of the things I wanted, yes.

Q And so you got what you wanted, isn't that correct?

A I got what I wanted at that time, yes.

Q But you didn't get everything because you couldn't get the termination allowance, is that correct?

A Well, I didn't get it then, no.

Q Did you come back to work after your absence?

A Yes, I came back to work on June 28, 1971.

Q When for the first time did you actively begin to look for another job?

A I would say it was around the fall of 1972 I sent out resumes to a few prospective employers.

Q Did you have any conversations prior to the fall of 1972 with anyone at defendant concerning what your plans were?

A I don't recall. You mean plans for another job?

Q Plans for continued employment with the defendant.

A Before searching for the job, I don't think I had any such conversations. After I got the employment, I am sure I talked to my colleagues about it.

Q Not your colleagues. How about someone in a managerial position with respect to you?

A I informed Sam Cantor when I lined up this other job and worked out the dates that I would start -- how long I would stay with defendant and when I would go to work at the other job.

Q Do you recall when you informed Mr. Cantor of this fact?

A I would say it was around the middle of October of '72.

Q The middle of October '72?

A Right.

Q Let me show you a copy of what has previously been identified as Plaintiff's Exhibit 2 in Evidence, and I want to ask you so that the record is clear, you informed Mr. Cantor prior to October 13, 1972 which is the date of that exhibit?

A I must have because I couldn't pinpoint the exact date.

I do remember that I got the new job several weeks before I was able to start. I had to finish up a lot of things at defendant.

Q Isn't it a fact that the reason your name doesn't appear on that original chart is because you had informed him before that was made up that you were leaving?

A I guess that is true.

Q Let me show you again Defendant's A in Evidence, which is a copy of your memorandum to Mr. Cantor.

Is that the first time subsequent to the initial request and rejection of the termination allowance that you brought the topic up again with Mr. Cantor?

A Yes, I'm pretty sure that is true.

Q And the date of that is October 17, 1972?

A Right.

Q Nearly two years later?

A Right.

Q Let me show you a copy of a document which purports to be a memorandum from Mr. Cantor to you ans ask you if you can identify it?

A That I remember.

Q And what is it, sir?

A It's a memorandum from Mr. Cantor telling me that he

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK N.Y. - 791 1020

does not see any reason to change his original decision.

Q And what date is that?

A That is October 23.

Q Six days later he responds that he can't change his original decision.

Did you thereafter respond to Mr. Cantor's memorandum?

A As I recall it, I did. As I recall, I asked that the matter be submitted to the President and the Board of Trustees, I believe.

Q Let me ask you to review a copy of a document dated October 24, 1972 purporting to be a memorandum from you to Mr. Cantor and can you, if you can identify it?

A That's correct.

Q You can identify it as described?

A That is correct.

MR. CARLEY: I offer both of these.

X (Defendant's Exhibits D and C received in evidence.)

Q With respect to Defendant's Exhibit C, the October 24 '72 memo from you to Mr.Cantor, did you in fact get any response to that request?

A I got no written response to it.

Q You got a response, oral or written?

A Yes.

Q And what was that response?

A The response was Richard Frick, then Executive Vice President of defendant, called me up to his office and there was also present Neal Jewel, then Vice President of Personnel, and they saught to persuade me that their action was correct. They had a memorandum which they said bore out their claims that there were other instances where people were denied. I was not permitted to look at the memorandum. I argued with them. I argued very amicably. I stated my regard for Richard Frick, who had been very good to me as boss of the law department but I said I just couldn't agree with him.

Q Did you have a complete conversation about what you thought and what he thought?

A Oh, I was given every opportunity to express myself. I didn't get anywhere. As I say, it was very courteous.

Q Did Mr. Frick at that time indicate to you that persons -- that there were persons who had not received the termination allowance?

A He did tell me that.

MR. CARLEY: With the Court's indulgence, this is one of the documents we have stipulated to. It can not be testified to by the witness. We will refer to it,

Your Honor, as the Frick Memorandum, which is a compilation of the entire experience with regard to the plan from 1963 to 1972.

X (Defendant's Exhibit E received in evidence.)

Q So then, subsequent to your conversation with Mr. Frick, you had been told by how many people that not everybody received the termination allowance?

A You say prior?

Q Subsequent to your conversation with Mr. Frick, how many people had told you that not everybody received the termination allowance?

A I don't recall any such conversations at that time.

Q Didn't Mr. Cantor tell you in 1970 that not everybody received the termination allowance?

A On the second time I saw him I think he did say that.

Q And again in 1972, didn't he address the same subject?

A He did.

Q And didn't Mr. Frick tell you that not everybody got the termination allowance?

A Yes, he did.

Q I believe it is stipulated too that effective December 1, 1972 you took early retirement, is that correct?

A That is correct.

Q You actually finished working a few weeks before that, isn't that correct?

A That is correct, around the middle of November.

Q There is no contention in this case that you were deprived in any way of any pension benefits, is there?

A No contention of that sort.

Q Subsequent to all of this activity did you make any complaints to regulatory bodies?

A Yes, I did. I wrote a letter to the New York Insurance Department.

Q Let me show you a copy of a letter consisting of four pages dated November 10, 1972 to Mr. Israel Krowitz of the Insurance Department and ask you if that is the letter that you sent?

A That is correct.

Q And did you get a response to that?

A Yes, I did.

Q Let me show you a copy of a two page document purporting to be an envelope and other postal things and a copy of a letter dated March 13, 1972 to Mr. Benjamin Cohen to Mr. Hollander. Is that the copy of the response you received?

A That's the response I received.

Q In sum, can you tell the Court what the Insurance

Department said?

A In substance the Insurance Department said that they had no jurisdiction in the matter.

MR. SILSDORF: I don't see any relevance to this at all. He made a complaint and the State Department of Insurance said they had no jurisdiction.

THE COURT: Will you stipulate that's so?

MR. SILSDORF: He already testified to that.

THE COURT: Okay.

Q Did you not also make a complaint to the New York Department of Labor?

A I did.

Q Let me show you --

THE COURT: Maybe you can stipulate to that. What did they say?

MR. CARLEY: The same thing.

THE WITNESS: They said in effect that I was an executive and they don't handle cases involving executives.

MR. SILSDORF: There is a phrase here worthy of note. One of them said, Your Honor, that taking jurisdiction over this -- the Insurance Department -- we have no more jurisdiction than we have in determining the equity of

A-43

salary levels of employees which you can take for whatever it's worth.

Q After electing early retirement were you employed by someone?

A Yes.

Q Who was that, sir?

A Computer Investors Group. It's a corporation that engages in the leasing of computer equipment, computers and computer equipment.

Q And you were employed effective what? I'm going to suggest that your early testimony was December 1, 1972?

A Yes, I think I took a couple of weeks off.

Q For how long were you employed by them?

A Until February 22, 1974, about fifteen months.

Q What was your title?

A Associate Corporate Counsel.

Q And what was your salary?

A $20,000.

Q I believe your earlier testimony was that you have lived in your current residence in Old Greenwich for 29 years, is that correct?

A Correct.

Q Is it fair to say that the claim you are making here is not -- withdrawn.

****

Just one further question. In preparation of this case did you not assist counsel a bit?

A I did, to the best of my ability.

Q I can attest to the fact that your ability is considerable.

A Thank you.

Q Didn't you use the law library and facilities of Mutual of New York to do all this work?

A I must confess I did because the Stamford Law Library lacked funding.

Q Isn't it a fact when I was up there preparing under great pressure for this case on Friday, who should I run into but you?

A I was doing my last minute licks.

Q I guess we both were.

MR. CARLEY: No further questions.

REDIRECT EXAMINATION

BY MR. SILSDORF:

Q As part of assisting me in the preparation of this case, Mr. Hollander, we served a request for documents pursuant to Rule 34?

A We did.

Q And am I correct that the ultimate production was an invitation for you to go up and look at the records up at

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

the office of Mr. Kaplan and you were given permission to make copies of any documents which you could find there and so on and which they produced?

A Right.

Q Regarding these two employees which Mr. Carley lays great stress on, Winfield Saunders and Gerhard Munch, were you given any records pertaining to them?

A I was not.

Q Was that the matter --

A Excuse me, recently I was given records pertaining to them.

Q What reason if any was given that they were denied the termination allowance?

A There was no memorandum in the file regarding either of them that I could see, no request for it from them, no memorandum why they didn't get it or that any consideration was given to it even.

Q In other words, is it possible, from your examination of the records, do I understand that you found nothing in their file to indicate they had requested termination allowance?

A That's correct.

MR. CARLEY: Objection.

THE COURT: Sustained. The records speak

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

for themselves.

MR. SILSDORF: Not the records we have here.

THE COURT: Then you should have subpoenaed them.

MR. SILSDORF: He went up there and examined the records and there was nothing in the records of the two employees to indicate they had applied for termination allowance.

THE COURT: Sustained.

MR. CARLEY: I have a further note. Given the peculiar nature of the case and the plaintiff enormous latitude has been given with respect to his testifying in support of his own case and we get into particular difficulty when he testified about records that he saw and what he thinks might have been in there.

THE COURT: I ruled on this. Do you want me to go back and rerule and possibly change my mind? I'll listen to you.

MR. CARLEY: No, thank you, Your Honor.

Q When you were with Mr. Kaplan and he produced the records which we had requested, did you ask Mr. Kaplan --

THE COURT: I can't understand what relevance this has. Here is a company that saved it's discretionary power to do this and what sense is there to talk about

whether there is a reason for it or not? They didn't have to give a reason.

MR. SILSDORF: That's the point --

THE COURT: Not under their plan they didn't.

MR. SILSDORF: Under their words they said they had discretion.

THE COURT: I could decide this case right now. There is wishful thinking on his part. That's all he has as a prayer and that is not a good one. He didn't know who was turned down and people didn't come and tell him about it, what has that got to do with it? The company did exercise it at least three times and that's not in dispute.

MR. SILSDORF: What three times?

THE COURT: The three people mentioned here.

MR. SILSDORF: That's the point of my question, they didn't even apply for it.

THE COURT: I'm not going to let him tell us whether they applied or didn't apply.

MR. SILSDORF: We requested documents and asked for copies of the applications and were told they aren't there, then they didn't apply for it.

THE COURT: Ask questions.

MR. SILSDORF: If Your Honor wants to rule

without consulting our memorandum --

THE COURT: I'm not ruling now. I said I almost feel it could be done that way but I'm not ruling on it until I read your cases and read the rest of this. Why do you think I denied the summary judgment for? Do you want me to go half cocked and decide it in the middle of the case? I could have decided it in the summary judgment motion.

MR. SILSDORF: That's what I thought you were saying, Your Honor.

THE COURT: All right, get on with this thing.

Q Did you have any conversations with either Mr. Munch or Mr. Saunders as to their termination?

A Not regarding what they might have gotten in the way of termination.

Q How about Mr. Jenks?

A We had a great many conversations on the subject.

Q And did Mr. Jenks give you any indication of what was happening regarding his termination allowance?

A Yes, he said that they had given him the same treatment they gave me.

Q When Mr. Cantor turned you down did he give you a reason?

MR. CARLEY: Objection. Which time?

MR. SILSDORF: Either or both times.

THE COURT: I have heard this about five times now, what was said at that time and I'm fully aware of what he said to him. He didn't want to lose him. They thought he was a good employee. That's all he said to him.

Q You testified under cross examination that you had consulted at least two employees who worked on the administration of this plan as part of the reason why you were under the impression that this plan was uniformly granted to persons in your position.

Can you describe the two employees, give their names of the employees and their positions?

A Richard Jenks had the title of Counsel and Raymond Neal, and I don't know what his title was in the Personnel Department.

Q These are the people you say worked on the administration of the termination allowance plan?

A Correct.

Q And these conversations were prior to your making the first request for termination allowance in 1970?

A Yes.

MR. SILSDORF: No further questions.

MR. CARLEY: No further questions.

THE COURT: You may step down.

-48

(The witness was excused.)

MR. SILSDORF: We were given to understand this Court adjourns at 12:30 for lunch.

THE COURT: No, we don't. That's the trouble with hearsay testimony.

MR. CARLEY: We have a witness that the company wants to call --

THE COURT: This is still the plaintiffs case.

MR. CARLEY: A witness employed by the company that plaintiff wants.

THE COURT: When will he be here?

MR. CARLEY: I can call him and have him come down.

THE COURT: What's the offer of proof with this witness?

MR. SILSDORF: This is an officer above Mr. Hollander and Mr. Cantor in the law department as to what the allocation of Mr. Hollander's duties are after he left the company, how they whacked it up among the law department as to who took over Hollander's duties.

THE COURT: Two o'clock.

(Luncheon recess.)

MR. SILSDORF: Your Honor, on the subject of

these well regarded valued employees we would like to offer in to evidence the salary record cards of the employees who received termination allowances and with the Court's permission Mr. Hollander has prepared from these cards a compilation of the number of increases, salary increases that each of these employees received in their last three years of service and the percentage of salary increases.

MR. CARLEY: Your Honor, I would object to admission of the documents in to evidence for the following reasons: The salary records were requested of me and we furnished them just about five minutes ago. I have never seen before this time the compilation by Mr. Hollander based on the salary records and am in no position at all to verify for this Court that his computations reflect accurately what is contained in the salary records. So I don't see how I can do anything to consent to the admissibility of the salary records which I do not deny came from the company files. I fail to see the relevance but in order to expedite things he can put them into evidence. As to the files Mr. Hollander is capable of testifying as to what he saw but I don't think the computations reflected in that document are admissible independently.

MR. SILSDORF: This is for the convenience of the Court rather than the Court go through each one of the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

cards. The materials we want to glean from the card with each particular name is the number of salary increases they got in the last three years of service prior to retirement and the percentage of salary --

THE COURT: What do you say is the relevancy of that?

MR. SILSDORF: Mr. Hollander testified that he was informed by Mr. Cantor that the reason he wasn't being given termination allowance was that he was a well regarded valued employee. In other words, they want to keep him. We want to show that this batch of employees who received termination allowance were also well valued and highl regarded employees, with that they received many salary increases in the last three years prior to retirement.

THE COURT: I think there are a lot of steps there. I have to base an inference on an inference. I have seen many cases come through here where the employee gets salary increases. It has nothing to do with his ability. It has to do with a good union who goes in there and fights for them. There is no relevancy between that and their increase.

MR. SILSDORF: These are all executives. There is no union.

THE COURT: I'm just saying there are

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y. - 791-1020

variables. However, I'll take them for whatever they're worth. At this point I don't think they are worth much, very frankly.

MR. SILSDORF: You have to assume, a man here got four increases in the last three years of service, you have to assume they weren't too anxious to get rid of him.

THE COURT: Why should I have to assume that?

MR. SILSDORF: Your vast experience in every day life.

THE COURT: Look, I was Commissioner of the Law Department, Commissioner of the License Department, I have had hundreds of people under me employed. I know many of those increases come along for a lot of reasons and it isn't particularly because they are such good employees on many occasions, but, as I said, I'll allow them. I'll have them marked for identification. - The computation we can't accept so we will just mark those for identification.

MR. SILSDORF: The computation is for your convenience rather than having to read through all those cards.

X (Defendant's Exhibit 4 received in evidence.)

X (Defendant's Exhibit 5 marked for identification.)

MR. SILSDORF: I next want to introduce into evidence, YourHonor, the memoranda and recommendations of these employees as they applied for termination allowance benefits and the memoranda prepared by their superiors addressed to the Executive Vice President and so on, in which they describe the savings that will be made to the company and that the company will recover more than the termination allowance and other comments they put in here regarding each employee who was granted termination allowance.

These come from the records of the company.

MR. CARLEY: Your Honor, just so that the record is eminently clear, the salary cards as I understand them do not consist of all of the persons who are reflected in the entire experience of the plan, which is marked as Defendant's Exhibit E for the Frick Memorandum but rather a portion of those persons and I am not sure how many or what portion of the overall experience.

Secondarily, the compilations which are marked into evidence as Plaintiff's Exhibit 5 also are a compilation not based on the entire experience but a portion of that experience and I am not sure what portion.

As to this batch of employees documents which I understand has been proffered for evidence, it's true subject to verification because I have the documents we did turn over

in discovery and I have no reason to believe Mr. Silsdorf is putting in something that I haven't turned over to him. These also do not comprise the entire experience of the plan but a portion of those persons who were granted termination allowance. For whatever it's worth, I am not going to object to the admissibility of this since we did produce them and they are company records but just so the record is eminently clear, these do not reflect the entire experience of the plan.

MR. SILSDORF: Mr. Hollander tells me that these cards and the memoranda are the employees listed on Tab A attached to the interrogatories, Your Honor, in other words, the people with more than 20 years experience and who retired after they were 55 years of age.

MR. CARLEY: That can't be so because Tab A consists, as we demonstrated, of more than employees over the age of 55 or 20 years experience.

MR. SILSDORF: Whatever was on Tab A, that's what these are. Tab A consists of 80 employees whereas we know there are 218 which were considered during the ten year period so it's approximately a 30% sample.

I have to amend my last statement. These are only employees with 20 years or more service and age 55 or over.

X (Plaintiff's Exhibit 6 received in evidence.)

MR. SILSDORF: Mr. Eldred, please?

W I L L A R D E L D R E D, called as a witness on behalf of the Plaintiff, having been duly sworn by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SILSDORF:

Q Where do you reside, Mr. Eldred?

A 103 Kendall Road, Kendall Park, New Jersey.

Q Are you employed by Mutual of New York?

A I am.

Q What is your position there?

A My current position is Second Vice President and General Soliciter.

Q What was your position on December 1 or October, November and December 1, 1972?

A My recollection is that it was Associate General Counsel.

Q As Associate General Counsel were you one of the superiors in the law department of Mutual of New York?

A I was, along with three other associate general counsels at the time.

Q And you knew the plaintiff, Carl Hollander?

A Yes, I do.

Q For how many years?

A I have known him for 23 years, ever since he came to the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

company.

Q In connection with his duties in the company?

A Yes, I have.

Q There came a time when Mr. Hollander retired on or about December 1, 1972?

A Yes.

Q Will you tell His Honor what duties he performed immediately prior to his retirement or generally prior to his retirement?

A Would you clarify the period a little bit?

Q From the period of October 1970 to December 1, 1972.

A Well, in 1970 he left for this vacation for about six months. At that time, because of a prolonged absence it was necessary for me to allocate his responsibilities during that six month absence and we did that. He had responsibiliti as I recall, in the group area and the pension area, legislati and the company's security plan plus as one of the senior members of the department he also had responsibilities connected with the Board agendas and he would get special projects involving legal research and analysis. But those responsibilities were dispensed among several other attorneys in the department.

Q This was after Mr. Hollander left?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

A I'm talking about during the six month absence.

Q And then he returned?

A Then he returned in July or June of '71.

Q And?

A Thereafter it was difficult to really reassign all of those responsibilities, at least in full, because I didn't really know how much longer he was going to stay other than to the end of the year which he had agreed to stay.

Q The end of which year?

A '71, I believe.

Q You say he agreed to stay until the end of '71?

A That's my understanding, he had agreed to stay until the end of '71.

Q From where did you derive this understanding?

A I believe from Mr. Cantor and possibly Mr. Hollander, although I'm not absolutely certain of that. When he returned getting back to your question, he did work with Mrs. Ray in connection with the pensions of the pooled accounts and resumed a great deal of his legislative work. The group work was not a day by day affair but he was working as a superior of George Rodgers, who had had some of that during his absence.

Would you like me to pick up following --

Q Just continue his duties upon return from vacation.

A-57

A Those were approximately his duties.

Q Did his duties increase during that period up until the time he retired?

A No.

Q His title at that time was Assistant General Counsel?

A Correct.

Q There came his time of retirement or his announcement of retirement in October 1972 and what happened with his duties at that point?

A Well, as I indicated earlier other individuals had in large part those responsibilities already though he was sharing them and they were fully dispensed with in the sense that Mrs. Ray, who had been working on the pension and the pooled accounts, took all those responsibilities, Mr. Kaplan, for example, who had been working on the Board agendas and by-laws and so forth took over those responsibilities. Mr. Rodgers assumed the group responsibilities and his miscellaneous responsibilities relating to special group projects derived to me.

Q So that in effect all of his duties were allocated among the existing employees of the department?

A That's correct.

MR. CARLEY: Objection, leading.

THE COURT: Sustained as to form.

Q Were any additional employees brought in to replace Mr. Hollander?

A None that I can recall.

Q Was the title of Assistant General Counsel ever filled?

A Subsequently it was filled.

Q Was that Mr. Kaplan in October 1973?

A That's correct.

MR. SILSDORF: That's all.

MR. CARLEY: I have no questions, Your Honor.

(The witness was excused.)

MR. SILSDORF: Once again, Your Honor, I would wish to offer this MONY newspaper, the issue of October 1, 1973 to show what the early retirement benefits were at the time Mr. Hollander retired and the fact that they were increased after his retirement.

MR. CARLEY: I think on cross we established there is no issue as to the earlier time and I asked him that and he said that was no issue.

MR. SILSDORF: We want to establish that the termination allowance plan was established as an adjunct to the early retirement benefits because the early retire-

ment benefits being so comparively low and, as Mr. Hollander testified to it, the termination allowance plan picked up about three years, assuming he had gotten to those employees who got the full year full benefits would have equalled three years of early retirement benefits. That was the purpose of trying to show --

THE COURT: I'll take it subject to connection. I'm not saying that I'm going to find it to be connected but I'll take it.

X (Plaintiff's Exhibit 7 received in evidence.)

MR. SILSDORF: The plaintiff rests, Your Honor.

MR. CARLEY: At this time the defendant would move for a directed verdict on the primary grounds that, one, under the terms of the plan the plaintiff has failed to demonstrate whether or not he is eligible at all in so far as there has been no testimony as far as I know that demonstrates that he fits the criterion expressed at paragraph 2A which is that by his replacement there would have been sufficient salary savings over a five years period. There has been a great deal of speculation and argument by counsel but no direct testimony.

Secondarily, the defendant would argue that the evidence produced thus far indicates that the plan has been

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

administered in such a fashion that approximately 60% of all persons within a ten year period who were considered received the termination allowance. Several of those, even within the restrictive criteria set up by Mr. Hollander did not receive it and they were members of the law department. Indeed, we have brought out testimony on cross examination that three such employees with comparable seniority status, salary and function did not receive it. And based on the foregoing undisputed facts I believe that the defendant is entitled to judgment at the close of the plaintiff's case.

THE COURT: I will reserve decision on the motion.

MR. SILSDORF: Do you wish to hear argument?

THE COURT: Look, I went through summary judgment on this case. I read the cases at that time. I am fully aware of what is involved here. I have been listening very carefully here during the course of this testimony. I know what your arguments are because most of the arguments were made during the giving of the testimony by asides and by other remarks by both counsel. I am fully aware of what the issues are in this case and have been for quite a while.

MR. CARLEY: The defendant would call Mr. Thomas Davis, please.

T H O M A S D A V I S, called as a witness on behalf of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

the defendant, having been duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. CARLEY:

Q Mr. Davis, could you please tell the Court and spe directly to His Honor, if you will, your current address, please?

A 15 North Crane Road, Mountain Lakes, New Jersey.

Q Will you tell us your current occupation and by whom you are employed?

A I am employed by the Mutual of New York, currently as Assistant Vice President for Personnel.

Q For how long have you been employed by Mutual of New York?

A Seventeen and a half years.

Q During that period of time has your employment responsibility been in the area of personnel entirely?

A For about fifteen of the seventeen and a half years.

Q Can you tell the Court what those responsibilities are?

A Currently they involve responsibility for typical personnel functions such as employment-employee relations, benefits administration, wage and salary administration, training and development programs, development of corporate

personnel policy, applications, interpretations of policy and procedures and so on.

Q In the course of your responsibilities have you become familiar with the termination allowance plan?

A I have.

Q Let me show you what has been marked as Plaintiff's Exhibit One in Evidence, and ask you if you recognize that to be the termination allowance plan as we have described it?

A It is.

Q Can you tell the Court in summary how applications under the plan are treated procedurally?

A Could you state that again?

Q If an employee wishes to make an application for a termination allowance, what is the procedure involved in so far as the works within the company?

A Through his department the employee contacts the department head and indicates that he is interested in leaving the company and securing a termination allowance. If the department head feels that it's in the interests of the company to encourage that, he then puts together a recommendation which requires executive approval, that is the recommendation is to an Executive Vice President of the company and secures concurrence of the Personnel Department as a part of that process.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

Q So, in sum, there are three levels of approval which are required before a termination allowance would be awarded?

A Yes.

Q And the first such level is the department head?

A Yes.

Q In the course of your responsibilities in connection with the termination allowance plan, have you ever known of the Personnel Department to approve an application that was disapproved by a department head?

A Not only would we not approve it, we wouldn't see it.

Q In the normal course, it would go no further than the department head, is that right?

A That's correct.

Q Did there come a time in July 1968 that the plan itself was amended?

A Yes.

Q I show you what has been marked in evidence as Plaintiff's Exhibit 3, which is an article appearing in a MONY newsletter and ask you if that newsletter reflects accurately your understanding of the amendment and the purpose of the plan?

A Yes.

Q I draw your attention specifically to the phrase

contained in the article which appears at the second paragraph up from the bottom in the first full sentence and ask you if it's your understanding that such awards would only be made when in the judgment of the persons you have discussed it would be "mutually advantageous" to both the company and the employee? Does that accurately reflect your understanding?

A Yes.

MR. CARLEY: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. SILSDORF:

Q Mr. Davis, how long have you been working on the termination allowance plan or had anything to do with it?

A How long have I had anything to do with it?

Q Yes.

A Approximately since 1966.

Q That's about eleven years.

In other words, every application for termination allowance which came in to you had been approved by the department head. is that your testimony?

A Anyone that I was directly involved in had been approved by the department head, yes.

Q Is there a kicker in there? What do you mean anyone you were directly involved with?

****

A For the period of 1966 to 1969 I was not involved directly in the processing of termination allowances. For the period of 1968 to '70 I was involved in those at management levels.

Q At management levels?

A Yes.

Q What does that mean?

A Officers of the company.

Q Officers. Was Mr. Hollander an officer?

A He was.

For the period of '70 to '72 as Director of Personnel at our M.O.N.Y. center in Syracuse I was involved directly with those from those processed at the service center directly in Syracuse and from 1972 to date I have been involved in all.

Q I am not sure I followed all of this.

You have been involved directly and indirectly as you testified for about eleven years with these voluntary termination allowance plans. And any one that you have seen in those eleven years had the endorsement of the department head on it, is that correct?

A That's correct.

Q None of them came in without the endorsement of the department head, is that correct?

A That's correct.

Q Are you in a position to tell us how many applications there were for termination allowance which did not have the endorsement of the department head?

MR. CARLEY: Objection.

THE COURT: As far as he knows none of them comes through.

MR. SILSDORF: That's what he said.

THE COURT: Yes, that's what he said. How can he answer a question like that when he has indicated already he has no knowledge that any ever came through?

MR. SILSDORF: I'm bound by the answer?

THE COURT: You are not bound by it but it seems to me that's his testimony.

MR. SILSDORF: That's his testimony.

THE COURT: Ask questions please.

Q I asked the question, did you ever see any applications for termination allowance which did not bear the endorsement of the department head?

THE COURT: Sustained. He already answered.

MR. SILSDORF: He answered it on direct examination. I can not cross examine, is that Your Honor's ruling?

THE COURT: Ask questions. He just got finished telling you that on your examination, not on his.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

MR. SILSDORF: It was on his examination. I'm just starting with this witness. I want to know if he ever saw one that does not bear the endorsement of the department head and you said he answered it and I can't ask it.

THE COURT: He answered it in answer to your question.

MR. SILSDORF: He did not.

THE COURT: I beg to differ. You can continue with the next question. You have an exception to the Court's ruling.

Q Do you know of any applications which did not have the endorsement of the department head?

A No, I don't.

Q In eleven years you know of none?

A I know of no applications from a department head that did not have his endorsement, no.

Q In other words, they came in from the department head and not from the employee?

A That's correct.

Q And you said this was only in your area of service by Syracuse or something like that?

THE COURT: Sustained.

MR. SILSDORF: What's sustained?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

THE COURT: The objection is sustained. I am making it.

MR. SILSDORF: I can't cross examine the witness then?

THE COURT: Are you through?

MR. SILSDORF: Your Honor is just overruling me --

THE COURT: I am not doing anything except running this courtroom according to the rules of evidence here, which have just been passed again. This is within my entire discretion and control.

Go ahead and ask any question you want and if you haven't covered it before well and good. You can go into it. I'm not going to regurgitate everything four or five times.

Q Are you familiar with this list which is attached -- which we have been calling in this courtroom Tab A, attached to the plaintiff's interrogatories, are you familiar with that?

A I don't know.

Q I have to show it to you.

A No, I'm not familiar with it.

Q Were you ever called upon during the course of this action, prior to today, to prepare any list of employees who

received termination allowance or did not receive termination allowance, as the case may be?

A I was called upon to prepare the information for one list which listed by year from approximately 1962, 3 or 4 to 1972 the names of those people who either retired or terminated from the company with a deferred annuity and we did prepare that information and forwarded that list to the law department.

Q Did that list also contain the people who received termination allowances? Did the list also contain the people who received termination allowances?

A Yes.

Q You said deferred annuities. I didn't hear you say anything about termination allowances.

Did it also contain on the list people who did not receive termination allowances?

A Yes.

Q And where did you get that information from? The ones who did not receive it, that is.

A Because when an employee terminated from the company we would have it on record if as a part of that termination they were receiving a termination allowance. Therefore, anyone who terminated and did not receive one obviously did not receive one and we listed them as such.

Q And where would you get the information from as to who received it and who did not receive it?

A We would get that information on the basis that those people for which there had been a formally approved termination allowance were in fact receiving one. Others who left who did not have a formally approved termination allowance were not receiving one.

Q Did your records up in Syracuse also indicate whether or not anybody had applied for one and had not received it?

A Our records would not indicate that.

Q In other words, when you prepared the list of employees containing those who did not receive termination allowances you were just preparing it from the fact that there was no termination allowance, not whether or not they had applied for it and been rejected or not, is that correct?

A That's correct.

Q So that any list prepared from the information you furnished would not show whether or not they applied for it, just that they were not receiving one, right?

A That's correct.

Q Are you familiar with an employee named Winfield Saunders?

A No, I'm not, although the name sounds vaguely familiar.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

Q How about Gerhard Munch?

A I believe he was one of our lawyers.

Q Do you have any recollection when you were going through these records to prepare these lists seeing the record of Gerhard Munch?

A Offhand, no, I don't recall.

Q Did you prepare them yourself or did something else in Syracuse prepare them?

A My records supervisor and my benefits clerk prepared the lists.

Q These are people underneath you?

A Yes.

MR. SILSDORF: Thank you, Mr. Davis.

THE COURT: You may step down.

(The witness was excused.)

MR. CARLEY: The defendant will call Mr. Samuel Cantor.

S A M U E L C. C A N T O R, called as a witness on behalf of the Defendant, having been duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. CARLEY:

Q Could you tell the Court your present address?

A Audubon Lane, Greenwich, Connecticut.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

Q By whom are you currently employed?

A Mutual Life Insurance Company of New York.

Q What is your current title?

A Senior Vice President for Law and Corporate Affairs.

Q What was your position in October 1970?

A Vice President and General Counsel.

Q Was there a change in job function between October 1970 and today?

A For me?

Q For you, yes.

A Yes, sir.

Q Please let's describe for the Court your responsibilities in October 1970?

A Well, among other things, I was responsible for the legal affairs of the company. I was the chief legal officer of the company and that encompassed among other things the responsibility for administering the law department.

Q And in terms of administering the law department was that a managerial function?

A Yes, sir.

Q Would you have been described as the head or the management head of the law department?

A Yes, sir.

Q Would you be the head of the department in so far

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

as Carl Hollander was concerned?

A Yes, sir.

Q Were you aware in 1970 that the company, and I shall refer to Mutual as the company, had a termination allowance plan at that time?

A Yes, it did.

Q Let me show you what has been marked as Plaintiff's Exhibit One for Identification and ask you if you recognize it? It has previously been testified to as the termination allowance plan?

A Yes, I do recognize it.

Q Mr. Cantor, did there come a time in or about October 1970 that you had conversations with plaintiff, Carl Hollander, concerning his desire to take early retirement and receive the termination allowance?

A Yes, sir, I did.

Q Could you please tell the Court what those conversations were about?

A In the fall of 1970 Mr. Hollander came to me and he said that he was thinking of taking early retirement. He said he was tired of working. He said that he didn't want to put in another winter of commuting from Greenwich to New York. He was upset. He wasn't feeling well and he just had to get away and he wanted to quit and he asked me whether he could

A-68

get a years termination allowance. I told him at the time that I didn't see any way he could get this allowance. We were not asking Mr. Hollander to quit. We wanted him to stay and it just didn't seem to make any kind of sense for us to give him a years bonus to quit on us when we didn't want him to quit. We talked about it several times and somewhere in the fall 1970 I came up with an idea which I said to Mr. Hollander, "Look, Carl, if you're tired and you don't want to go through another winter of commuting and you need a rest and you want to get away", and also he had said in one of these conversations about wanting to go to Europe, I said, "Maybe we can work something out to solve your problem without your quitting, something along the lines of an extended leave of absence. You can have your trip to Europe and you can avoid coming in for the winter and let's see how that works out and after your return we will see how you feel about it then."

So we did work out such an arrangement and he was to take off, I believe it was from January 1st and return, I think the end of June. The one thing that I asked him to do and that he agreed to do was that when he got back in June tha he would at least stay with us until December, the end of the year, sothat in case he still wanted to quit, at least he would be there for those six months to help us break in new

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

people and help us over the transition period.

Q Let me show you a memorandum which has been marked as Defendant Exhibit B in Evidence, dated November 2, 1970 from Mr. Hollander to you, and ask you if that refreshes your recollection any further about the conversations you had in the fall of 1970 with Mr. Hollander concerning this subject?

A Yes, I believe this is the memorandum that Mr. Hollander sent me and putting it in writing and summarizing what we had worked out with respect to his leave of absence.

Q Do you recall if during this period of time Mr. Hollander mentioned anything about wanting to get another job?

A Yes. As part of these conversations he told me that he was tired of working and he was tired of commuting from Greenwich to New York and what he would really like to do would be to find a job, some kind of a legal job, up in Connecticut, near his home where he wouldn't have to come down to the city and it would make life easier for him.

Q Was this the first time Mr. Hollander ever talked to you about electing early retirement? We are dealing with the fall '70.

A So far as I can remember, yes, it was.

Q In terms of your own responsibilities for management of the law department did this present you with an

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

administrative problem?

A Yes, it did. Here was a senior member of our department, one of our experienced lawyers, who out of the blue tells me he wants to leave. Naturally these things happen and you deal with them and you live with them but frankly I was in a position where -- and I told Mr. Hollander this, I certainly couldn't see giving him a bonus of a years salary to do it.

Q Let me show you a copy of a memorandum dated November 16, 1970 and ask you if you can recognize it?

THE COURT: You know, most of this testimony is without dispute. I don't know why you go through this long recitation of everything that I know about the case and there hasn't been hardly a scintilla of difference between what Hollander said and what he has been saying. I don't understand it. I can understand if you have nothing else to do but to just put something in that's not disputed between the parties, I don't quite follow that.

MR. CARLEY: I'll try to shorten it, Your Honor.

Q Do you recognize that?

A As I read it, I recognize it, yes.

Q And you received a copy of that?

A I received a copy of that memorandum, yes.

Q Who was W.E. McMullan?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

A Mr. McMullin at the time was vice president in charge of personnel.

MR. CARLEY: I offer this in evidence.

MR. SILSDORF: No objection.

X (Defendant's Exhibit F received in evidence.)

Q Mr. Cantor, in order to shorten the testimony, because I don't think many of the facts are in dispute, we know that Mr. Hollander did indeed take his leave of absence with pay and return to work on or about June 28, 1971. We know further that he was employed effective until December 1, 1972.

Could you tell the Court when for the first time after June 28, 1971 did you have another conversation with Mr. Hollander concerning his continued employment?

A Well, December 1971 came and went and we heard nothing further from Mr. Hollander and sometime I believe it was early in 1972 I called him in and I asked him what his plans were. I said, "Carl, I want to make this very clear. We are not asking you to leave, we are not suggesting you leave, but we are trying to make plans for the future and I have never heard anything from you. Are you going to leave or not going to leave, just tell me so I know where I stand." And he said, well, that he hadn't found a job in Connecticut yet and, therefore, he was not going to leave until he found it. When

he found it he would probably leave.

Q At that point from a managerial standpoint, had any decision been made as to the number of functions you could safely give Mr. Hollander to do?

MR. SILSDORF: Objection. I don't know what safely means?

THE COURT: Sustained as to form.

Q From your standpoint as manager of the department had you made any decisions as to what kind of functions Mr. Hollander would be given?

A Yes, it became pretty evident that Mr. Hollander was probably going to leave sometime or other in the future before his normal retirement date and I had determined to begin to work some of the other people into some of these functions and to put him in a capacity of doing what I would describe as senior consultative work. It was becoming apparent from all that had transpired that we couldn't rely on him to be with us for the balance of his time before normal retirement.

Q We also know the testimony is not in dispute that Mr. Hollander did leave and did make applications in writing, which is in evidence, for a termination allowance, re consideration of the termination allowance in October 17, 1972. In evidence also, Mr. Cantor -- let me ask you this. How did you hear Mr. Hollander was leaving?

A The first time I heard about it was when our office manager, Mr. Gionatti called me up. I was out of town and he called me up to let me know that Mr. Hollander had just come in and said he was going to leave because he found a job in Connecticut.

Q In other words, you didn't even hear it from Mr. Hollander?

A No, sir.

Q At the time did you not have in preparation a chart for the organization of your department, at the time you spoke to Mr. Gionatti?

A Yes, sir, we were making some plans to reorganize the department and we had been working on shifting responsibilitie

Q Let me show you a copy of a document purporting to be a chart and ask you if you can identify it?

A Yes, I can.

Q This is a chart, what I would describe as a proposed organization of the department.

What we had done was both Mr. Hollander and Mr. Jenks, who were shown in a box sort of removed from the rest of the responsibilities, we put both of them in a box directly under Mr. Eldred, so that they could function in a sort of a senior consultative capacity and not in the regular channel of responsibility because both of them had -- Mr. Jenks had

indicated he wanted to retire and Mr. Hollander, I hadn't heard from him after December 31 as to whether he was going to stay or not.

MR. CARLEY: I offer this chart in evidence.

MR. SILSDORF: Object to this chart. I don't know what it has to do with the case.

MR. CARLEY: It's offered to show that prior to the time he announced his intention to leave he was on an organizational chart and there was no decision to replace him. He was an employee they wanted to keep. The next series of questions I'll ask Mr. Cantor is the evolution of the chart placed into evidence as Plaintiffs Exhibit 2 to demonstrate the reason it came into being was Mr. Hollander's decision.

THE COURT: I'll take it for historical purposes. It's a record of the company, is it not?

MR. CARLEY: Yes.

X (Defendant Exhibit G received in evidence.)

Q As a result of Mr. Hollander's announcement, did you redraw another chart of organization?

A Yes, sir.

Q Let me show you what has been marked as Plaintiff's Exhibit 2 in evidence and ask you if that is the redrawn chart

A This is the redrawn chart after I learned of Mr. Hollande decision to leave. It then became obvious --

THE COURT: Don't explain everything. That is what it was.

Q Mr. Cantor, just one final question. With respect to persons within the law department, do you know of the granting of any termination allowance to any employee whose resignation was not desired by the company?

A No, sir, I don't.

MR. CARLEY: No further questions.

CROSS EXAMINATION

BY MR. SILSDORF:

Q Do you know of a granting of any termination allowance to any members of the law department at all?

A Yes, sir.

Q Who?

A Mr. Vincent Keane, I recall, and I think --

Q Didn't Mr. Keane get eight months termination allowance and then keep on working?

A No, I believe Mr. Keane got four months termination allowance.

Q And then kept on working?

A He kept on working because he refused to accept it. He said he didn't want a termination allowance, he wanted to keep on working and he wouldn't take it.

Q He wouldn't take what?

A The termination allowance.

Q You mean he applied for a full year and he got four months --

A He didn't apply for anything. Mr. Keane's situation was a rather aberrant one, I wouldsay. He had difficulty with senior management of the company who were very anxious to cau him to leave the company and eventually he did leave under those circumstances and he was given, I think it was four months which he said he wouldn't take.

Q Were there any other employees involved in the time you have been head of the law department?

A Are you talking up to this point?

Q Up to the time of Hollander.

A To my knowledge there were none. There was Saunders, Munch, Keane.

Q Actually Keane was over 62, wasn't he 63 and a half when he retired?

A I don't remember.

Q And he didn't qualify under the plan because you had to be under 62?

A I don't remember what his age was.

Q What?

A I don't remember what his age was.

Q Mr. Keane does not appear in this compilation,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

this Tab A attached to the interrogatories?

A I don't know what compilation. You asked me if I knew of any other people in the law department. Mr. Keane was a rathe abhorrent situation. He was forced out of the company under circumstances that one would not like. They gave him an allowance which he refused to take. The other one was Mr. Jenks.

Q That came after Mr. Hollander, right?

A He was planning to retire and he was having discussions about a termination allowance about the same time Mr. Hollande was but he didn't get it either.

Q Were you involved with Mr. Munch and Mr. Saunders?

A No, I wasn't. Mr. Saunders left just a few months before I came and when Mr. Munch left Mr. Frick was still the General Counsel, I wasn't.

Q Was there any company policy involving members of the law department and termination allowance?

A There was company policy as I understood it.

Q Involving just members of the law department?

A No, not for the law department as distinguished from the rest of the company.

Q Why are the instances you have mentioned -- you have mentioned five names including Mr. Hollander, Mr. Keane, Mr. Munch and Mr. Saunders, none of them got it, what was the

-78

reason for that?

A Mr. Keane was the only one of the group who left because the company wanted him to leave. The rest of them were circumstances in which the company was not in the best -- it was not in the best interests of the company for them to leave and, therefore, there was no reason to give him a termination allowance.

Q Is there anything in the termination allowance plan itself which we have seen three times this morning where the company wants them to leave or the company doesn't want them to leave?

A I believe there is, sir.

Q Let's get the plan back now.

This is from your counsel's table here. Would you call to my attention and His Honor's the language which has to do about whether the company wants them to leave or doesn't want them to leave or any similar language?

MR. CARLEY: Objection. The plan speaks for itself. I take it he is asking for Mr. Cantor's testimony as the manager of the law department on the operation of the plan.

THE COURT: The document does speak for itself and I can read the document and I am familiar with the document anyhow from the testimony in the case. Sustained

MR. SILSDORF: I'm asking if the company had any policy regarding members of the law department.

THE COURT: He already answered that questio

MR. SILSDORF: I know that. His answer was that only members of the law department that the company wanted to get rid of would get termination allowance and I asked him if there was anything in the plan to that effect and he said yes. Now I want him to -- we're talking about to the general counsels of the company. I would like him to point out the language which he feels that only applied to members they wanted to get rid of.

MR. CARLEY: I think he can ask the witness what he did in particular cases but we all are very familiar with the language. One of the reasons we are here is the construction of the language in a legal sense.

MR. SILSDORF: Are you willing to concede there is nothing in this plan which says that?

MR. CARLEY: I concede nothing.

THE COURT: Objection overruled.

(Question read by the Court Reporter.)

THE COURT: In his opinion.

A The plan very clearly says, sir, this is to be done solely at the discretion of the company.

THE COURT: What's the next question?

Q How about the language immediately preceeding that, to terminate voluntarily or otherwise?

A What about it?

Q Does that have to do with whether the company wants them or doesn't want them to leave?

A The policy of the company was that people who were leaving whether voluntarily or otherwise under circumstances that were sitted in the company's view to be in the company's interest to qualify for the termination allowance if they met other criteria A and B, set forth below. But if it was not in the best interest of the company it was not the purpose of the plan and certainly in administering the plan in the law department, it seemed to me that you didn't give a bonus to somebody to leave when the company didn't feel it was in it's best interests for the person to leave.

Q In other words, Mr. Cantor, summarizing your last statements, the termination allowance only went to those the company wanted to get rid of, is that correct?

MR. CARLEY: Objection.

THE COURT: I'll allow it. I think that's exactly what they wanted and I don't know why they didn't have a right to do it.

A You said the expression "get rid of". I would qualify that to say someone that the company felt that it was in the

best interests of the company for them to leave. There could be a variety of circumstances why it would be in the best interest of the company for someone to leave.

Q But well regarded, highly valued employees, it was not in the best interest of the company to leave, is that correct?

A That's correct.

Q Isn't the net effect then that you reward incompetency and so on and you punish people who are doing a good job?

A Not necessarily. Incompetency would by no means be the only criteria that would weigh in a question of whether it was in the best interest of the company for someone to leave. You could have a health situation. You could have a situation where you would be curtailing the number of employees. You could have a situation where you were reorganizing in such a matter that it was felt from both the employee and the company's viewpoint it would be better if this person left. We had people being transferred to our Syracuse office from departments and people didn't want to go to Syracuse. The criterion was not necessarily incompetency. It was taking everything into consideration what was in the best interests of the company. For no other reason would we be handing people a bonus.

Q But you would hand them a bonus if you didn't want them to stay, right?

A If it was in the best interest of the company to cause the person to leave you would do something to help make it more easy for them to leave, yes.

Q Do you know if Mr. Saunders applied for termination allowance when he retired in 1964?

A I don't know. Mr. Saunders retired a few months before I got there and I don't know.

Q But you have been involved in this case right from the beginning and you have looked at records and asked for records and so on?

A I have not looked at those records, sir. I do not know.

Q How about Mr. Munch?

A I don't know.

Q Did Mr. Munch apply?

A I don't know.

MR. SILSDORF: No further questions, Your Honor.

THE COURT: You are excused.

(The witness was excused.)

MR. CARLEY: The defendant has no further witnesses, Your Honor.

THE COURT: Any rebuttal?

***

MR. SILSDORF: No rebuttal.

THE COURT: Both sides rest?

MR. SILSDORF: Yes, sir.

THE COURT: Motions are renewed now at the end of the entire case. The Court reserves decision.

Please leave the exhibits with the Court.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

APR 4 - 1977

A84

TERMINATION ALLOWANCE PLAN FOR CLERICAL AND ADMINISTRATIVE EMPLOYEES
(Effective July 1, 1968)

(1) Non-Discretionary Termination Allowances - until June 30, 1973

Employees who completed 10 or more years of service as of July 1, 1968; who have not reached age 61; or age 56 for those whose normal retirement age is 60; who receive salaries of not more than $8,500 per year; who terminate voluntarily or otherwise for any reason, during the next five years, i.e., to June 30, 1973, except for death, disability retirement or lay-off; will receive termination allowances of 10 weeks' salary for the first 10 years of completed service, plus 2 weeks' salary for each subsequent year of service, with a maximum allowance of 52 weeks' salary.

(2) Termination Allowances at the Discretion of the Company

Employees with 10 or more years of completed service; who have not reached age 62; and who terminate voluntarily or otherwise for any reason except death, disability retirement or lay-off; may, solely at the discretion of the Company, be given termination allowances of up to 10 weeks' salary for the first 10 years of completed service, and up to 2 weeks' salary for each subsequent completed year of service with a maximum allowance of 52 weeks' salary. Such allowance will be considered only:

(a) When the employee's position can be abolished or the salary savings from the replacement at a lower salary are sufficient to recover the amount of the termination allowance within 5 years, or

(b) When in the opinion of the Company it is desirable to encourage the employee to seek employment elsewhere, retire early, or engage in Field Underwriting.

(3) Lay-off

In case of lay-off by reason of work reduction, the formula for determining the allowance for any permanent, full-time employee will be 2 weeks' salary for each year of completed service.

(4) Method of Payment

A termination allowance will normally be payable as salary continuance. However, the Company may pay it in installments over a shorter period, or in a single sum.

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

October 13, 1972

TO: MEMBERS OF THE LAW DEPARTMENT

FROM: S. C. CANTOR

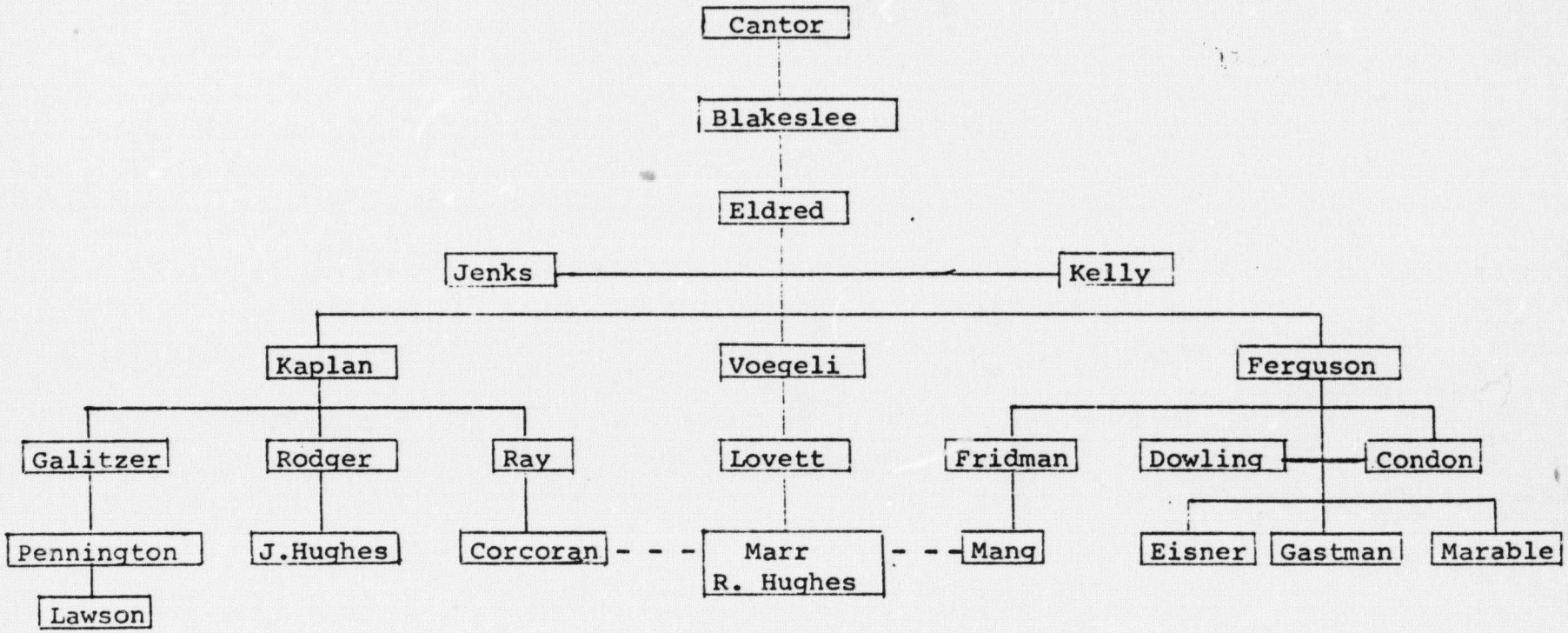
I am happy to announce that Mr. Ferguson and Mr. Kaplan have been promoted to the position of Counsel, and will each assume new and expanded duties in connection with a realignment of certain functions in the Insurance Operations Area of the Department.

In his new capacity, Mr. Ferguson will primarily supervise the Law Department's individual life and health insurance operations work. Mr. Kaplan will undertake supervision of field compensation, employee benefits, group products and certain Company corporate affairs.

While the attached Organizational Chart of the Insurance Operations Area of the Department has been redrawn to illustrate these new changes in more detail, it should be remembered that the nature of the Department's work is such as to require modification rather than stratification, as changing circumstances and workloads require.

This move is designed to strengthen lines of responsibility and provide additional support for Mr. Eldred in carrying out overall supervision of the Area. In addition, it represents part of a continuing effort to revise Departmental assignments in light of changing needs and to broaden responsibilities of members of the legal staff as part of a continuing program of growth and future development for Department personnel.

LAW DEPARTMENT
INSURANCE OPERATIONS AREA



10/13/72

PLAINTIFF EXHIBIT
APR 4 - 1977
3

...neers and Architects ...ONY Officers in N.Y.C.

...age Appraisers, Engineers and Architects were ...ed in New York City ... 1 ... 1 ... 1

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

APR 4- 1977

54

Hollander v. The Mutual Life Insurance Co.

Salary Increase Data for Employees of Defendant who Terminated at age 55 or over, but before 62, who had 20 or more Years of Service, who Received the Full Termination Allowance under Defendant's Plan, and for whom Salary Record Cards were Furnished by Defendant for Plaintiff's Inspection, for the Period of 10 Years Prior to December 1, 1972. (75 such Employees were listed in Tab A of Defendant's Response to Interrogatories, but Salary Record cards for 2 such Employees could not be Located by Defendant.)

(Number and Percentage of Increases for Last 3 Years of Service

Name	No. of Increases	Percentage of SALARY Increase
Fagan	4	26
Jentzen	3	16
Ritter	5	15
Myrtle	4	24
Neal	2	4
Brodie	3	14
Evers	3	19
Wider	0	0
Lowell	1	4
Noel	1	3
Nashold	2	5
Johnston	2	6
Bramlett	2	8
Schenck	1	15
Muller	3	16
Higgins	3	7
Carr	1	4
Brown	3	8
Embser	2	10
Van Riper	2	13
Reiland	2	7
Parks	3	13
Franke	3	9
Giere	3	8

A87

Salary Increase Data (continued)

Name	No. of Increases	Percentage of Increase
McQuillan	5	25
Thomson	2	12
Bollman	3	12
Hyer	2	7
Ayy	4	20
Egbertson	6	22
Ward	3	14
Mason	3	14
Lokke	1	8
Olsen	2	8
Varvaro	4	8
Unser	3	8
Schultz	4	16
Burgess	3	12
Fox	3	6
Stevenson	1	7
Parker	4	17
Phillipsen	4	20
Nathan	4	19
Webner	5	19
Hand	4	15
Krakora	5	19
Abels	3	16
Dunn	2	9
Pulvermacher	4	21
Falkenstern	4	12
Forrest	4	21
Attmore	3	16
Carlson	2	10
Malone	2	10
Hewitt	3	15
Ashworth	5	26
Barrett	4	19
Nielson	6	35
Peters	3	15
Corry	5	22
Cocuzza	4	16
Hardy	3	17

Salary Increase Data (continued)

Name	No. of Increases	Percentage of Increases
Bletsch	4	27
Thompson	4	18
Alexander	5	20
Toell	4	21
Becker	4	20
Jenkusky	3	17
Wolff	3	17
Scchwab	3	14
Coddington	4	15
Gaborini	2	9
Gelardi	5	29
Hollander (plaintiff)	2	10 (9.7)
Average of above: (not including plaintiff)	3.2	14.5

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

APR 4 - 1977

7

PUBLIC RELATIONS DEPARTMENT
THOMAS J. MOLONEY
Director of Press Community Relations
GEORGIANNA HINSCH
Editor
THOMAS F. SPRICK
Assistant Editor
MAUREEN McLAUGHLIN
CHRISTINA PAGANO
Editorial Assistants

Improved Early Retirement Benefits

Percentage of accrued normal retirement annuity allowed as early retirement annuity based on length of service.

Attained Age on Early Retirement Date	Current Percentage 10-15 yrs.	20 yrs.	25 yrs.	30 yrs.	35+ yrs.	New Percentage 10 yrs.	15 yrs.	20 yrs.	25 yrs.	30** yrs.	35+ yrs.
55	50%'	55%	60%	65%	75%	50%	55%	60%	65%	75%	85%
56	55	60	65	70	80	55	60	65	70	80	90
57	60	65	70	75	85	60	65	70	75	85	95
58	65	70	75	80	90	65	70	75	80	90	100
59	70	75	80	85	95	70	75	80	85	95	100
60	75	80	85	90	100	75	80	85	90	100	
61	80	85	90	95		80	85	90	95		
62	85	90	95	100		85	90	95	100		
Normal 63	90	95	100			90	95	100			
Retire- 64	95	100				95	100				
ment — 65	100					100					

**The percentages in this column also represent minimum percentages for female employees who were employed before July 1, 1953.

Pro rata adjustments will be made for other periods of service, as well as for fractional years of age.

Percentage applicable to the alternate early retirement annuity.

Age at Early Retirement	Current Percentage	New Percentage*
55	50%	72%
56	56	76
57	62	80
58	68	84
59	74	88
60	80	92
61	84	96
62	88	100
Normal 63	92	100
Retire- 64	96	100
ment — 65	100	100

*These percentages will be pro rated for employees with less than 30 years of service, with current percentages as a minimum.

Supplementary Income

Employees with at least 30 years of service at early retirement, will be paid a supplementary income until the retired employee reaches age 65 equal to one-half his primary Social Security benefit. If an employee has less than 30 years of service on his early retirement date, the supplement will be reduced pro rata. This supplement, when combined with the Early Retirement Annuity and Social Security benefits, will provide a retired employee with an income which is more nearly level over his retirement years.

Total annual income from MONY pension, plus Supplement and Social Security**

Years of Average Current Basis New Basis

A88

DEFENDANT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

APR 4 - 1977

MONY
MUTUAL OF NEW YORK
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

DEPARTMENT MEMORANDUM

	MAIL DROP	FROM—	MAIL DROP	H.O. USE TEL. EXT. NO.
Samuel Cantor, Esq.	10-16	Carl F. Hollander	10-31	410

SUBJECT— Request for Reconsideration of Payment to me of Termination Allowance Under Company's Termination Allowance Plan

DATE October 17, 1972

In connection with my leaving in November, I have been concerned about, and have given a great deal of thought to, this subject.

For reasons stated below, I think the Company should grant me the full amount of termination allowance under its Termination Allowance Plan, subject to adjustment to reflect the period of leave of absence with pay given to me in 1971. (While the leave was muchly appreciated at that time, I do not think it is an adequate substitute for the 1 years salary given to other employees.)

I believe I am entitled to that allowance under the letter and spirit of that Plan. The Plan refers to the granting of such allowance where either the position is abolished, or there will be sufficient salary savings. Either or both of these conditions apply in my case. In the first place, according to your memorandum of October 13, 1972, and the attached Law Department organization chart, my position as Assistant General Counsel, and as an Administrative Officer, is being abolished. In the second place, as will be discussed below, there will be more than ample opportunity to effect the requisite salary saving.

The stated reason for denial of such allowance is that the plan is intended only to encourage the retirement of employees whose continuance, by reason of some degree of unsatisfactory performance, is not desired by the Company. It was stated that, in my case on the other hand, my services were so highly regarded that the Company did not wish to encourage me to retire by giving me the allowance.

I think that such an action is grossly unfair in that it operates to penalize someone who has rendered long, meritorious and faithful performance. Such an attitude on the part of an employer, as stated in a Wall Street Journal article, tempts the employee to reverse his course and give unsatisfactory performance or become extra obnoxious. While you will be glad to learn that my conscience would not permit me to embark on such a course, I must say that the situation created by this and other circumstances regarding the denial of the termination allowance have increased, with each passing day, the intensity of my feeling that such action was unfair and arbitrary.

Aside from such unfairness, there are other reasons why I feel that the denial of the allowance in my case was not warranted.

I was the first one, and only one of two in the recorded history of the Plan (the other also being from the Law Department) ever to be denied the allowance. It has been allowed in the case of several dozen other employees whose compensation was over $8500. I cannot believe that all of these several dozen employees had performed in a manner which was unsatisfactory to such a degree that the Company desired the termination of their services. Instead, as I strongly suspect, having known some of the individuals involved, and would be glad to be given the opportunity to document my suspicions, that many such employees had good personnel ratings, and had received merit increases at reasonable intervals in the years immediately preceding their retirement.

Since the termination allowance plan provides for payment at any time up to 3 years before an employee's Normal Retirement Date, the implication is that a 3 year period would provide sufficient time to effect the salary savings referred to in the Plan, which refers to effecting such savings "within 5 years". If even a 3 year period would be sufficient, then it is very clear that, when an employee's termination is to occur 5 or more years before his Normal Retirement Date (almost 8 years in the case of my first request, and 5 2/3 years in the case of my second request) the period for recovery of cost through salary savings should be more than sufficient even in the case of a satisfactory employee. Certainly, this conclusion is obvious when the capability of our young attorneys is considered.

The Company's desire to part with an employee, (even assuming it is fair to give the allowance to a person whose past performance has been unsatisfactory and to deny it to one who has given good services, which I dispute), is a relevant consideration only in connection with that portion of the Plan which refers to the desirability of encouraging other employment, early retirement, or Field Underwriters. The only relevant considerations in my situation are the abolition of my position and the period during which salary savings can be effected. As shown above, where that period is 5 years or more, it is abundantly sufficient to permit effecting the cost savings.

The action denying the allowance to myself and my Law Department Colleague not only is not consistent with the granting of such allowance to employees similarly situated, but also it is not even consistent with the actions taken for employees not entitled to an allowance under the Plan.

In the case of Second Vice President Wickman, a leave of absence of one entire year with full pay, and presumably full fringe benefit coverage, was given.

In the case of several employees over age 62 (some as old as 63½ years) leaves of absence of 6 or more months, again at full pay, and presumably with full fringe benefits, have been given.

Since the Termination Allowance Plan refers to effecting salary savings within a period of 5 years but does not permit such an allowance to be paid if an employee retires less than 3 years before his Normal Retirement Date, it would seem reasonable to assume that the average period for effecting such savings would be a period of years midway between the 5 and 3 year periods mentioned, namely 4 years.

In relation to the salary cost savings guideline, the grant of 6 months termination allowance to employees with 2 or less years of service is clearly equivalent to giving 12 months allowance, or double the 6 months, where the 4 year average savings period is involved, even without the regular fringe benefits the Company permits to be attached to such 6 month grants. (Actually, such 6 month grants with fringe benefits have a relative value of more than the 12 months without fringe benefits accorded to younger employees.)

The essential provisions of the Termination Allowance Plan, the latest revision of which was adopted by the Board in 1968, are set forth at page 117.2 of the Supervisor's Manual. In the introduction to that Manual it is stated that:

> It is important, too, for employees to know they may refer to the Manual at any time. In this way they will better understand the personnel policies under which the Company operates.

While the Plan provisions to which I have referred are stated as being discretionary, the Company's uniform practice in granting them represents, in effect, the Company's interpretation of them. The statement of such provisions in that Manual, and such interpretation of them by the Company in its practices, is a matter of common knowledge to long service employees.

Accordingly, it is my belief that, under the Plan, as it has been uniformly administered in the past, and in view of the circumstances stated in this memorandum, the Company's discretion should be exercised in my favor.

I would appreciate learning of the Company's response to this request at as early a date as is possible, since less than 4 weeks remain before the last day I am to be at work with MONY.

cc; Edward E. Blakeslee
Neal Jewell

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

APR 4 1977

ERS

November 2, 1970

TO: SAMUEL C. CANTOR, ESQ.

FROM: CARL F. HOLLANDER

This is to follow up on your suggestion about working out a leave of absence for me.

As you know, I had planned on leaving after Thanksgiving, sort of going into Winter hibernation until about the middle of February, going to Europe for about 4 months, returning in June, and then having a couple of weeks to recuperate from the trip.

This schedule would mean a return to work on about June 28.

According to my figuring, such absence would be for a period of about 15 2-week pay periods, of which about 5 would be coming to me as vacation and holidays for the remainder of 1970, vacation for all of 1971 and holidays for the first part of 1971. This would leave about 10 pay periods.

I don't know how much of this MONY is prepared to cover. I would be willing to go without pay for part of the period, but I am wondering whether this might not operate to reduce my average salary pension base. (See definitions of "Service" and "Salary" in Article X and see reference in Article III, Section 8(b) to "Average annual salary for the five years of service immediately preceding his early retirement." Would this refer to my salary rate for 1971, or to such lesser amount as would actually be paid to me in 1971 if part of my leave is to be without pay. If it is the latter, I would probably be better off shortening my period of absence.)

Please bear in mind that I would be available to discuss problems by correspondence or telephone during almost half of my absence, or even to come in to N.Y.C. (e.g., to discuss premium tax case and attend the trial.)

Please let me know what the answers are on this.

A90

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Deft's Ex 7 for I.D.
~~11/7/77~~ 1/17/77 ERS

APR 4 - 1977

October 24, 1972

TO: Samuel C. Cantor, Esq.

FROM: Carl F. Hollander

RE: Request for Reconsideration of Payment to Me of Termination Allowance Under Company's Termination Allowance Plan

Thank you for your prompt response in the form of your memorandum of October 23, 1972; I had wanted an answer in writing.

Since I believe the Company's decision regarding my case is an abuse of discretion and a misapplication of the Board of Trustees Termination Allowance Plan, I now request that my memorandum be reviewed by the President and Chief Executive Officer, if that has not already been done.

If his answer is likewise in the negative, then it is my request that my memorandum be reviewed by the MONY's Board of Trustees.

Here again, a prompt written response to my requests will be appreciated.

CFH:bla

DEFENDANT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

APR 4 - 1977

Deft's Ex 6 for I.D
1/17/77 RRS

October 23, 1972

Dft

To: Carl F. Hollander, Esq.

From: S. C. Cantor

Re: Request for Reconsideration of Payment to Me of Termination Allowance Under Company's Termination Allowance Plan

I have reviewed your October 17, 1972 memorandum concerning the aforesaid and have looked into all of the facts. There would still seem to be no reason to change the original decision. I am sorry I can't give you a more affirmative response.

October, 1972

Clerical And Administrative Employees Paid Over $8,500
Who Retired Early Or Who Terminated And Received a Deferred Annuity
(1963-1972)

EARLY RETIREMENTS		DEFERRED ANNUITIES	
Employee Data	Term. Allow.	Employee Data	Term. Allow.
YEAR 1963			
W. Ruhl-Controller's $8,744-Age 62-44yrs.	5 mos. lv w/pay	Dr. Spalding-Medical $18,625-Age 41-10 yrs.	None
E. Wider-Sales $12,275-Age 55-39 yrs.	1 yr. salary	S. Hale-Sales $72,000-Age 53-25 yrs.	None
A. Duryee-Office Op. $10,575-Age 63-44 yrs.	1 yr. salary		
YEAR 1964			
F. Hallen-Office Op. $15,000-Age 64-34 yrs.	16 mos. lv w/pay	L. Quarles-Sec. Inv. $10,200-Age 43-21 yrs.	None
W. Saunders-Law $26,000-Age 58-32 yrs.	None		
YEAR 1965			
H. Hayman-Controller's $11,790-Age 62-45 yrs.	3 mos. lv w/pay	W. Froebig-Group $9,657-Age 49-31 yrs.	None
A. Lowell-Office Op. $11,265-Age 60-27 yrs.	44 wks. salary	A. Ramm-Actuarial $11,790-Age 44-23 yrs.	None
R. Klager-Sales $17,950-Age 60-43 yrs.	3 mos. lv w/pay		
J. Wickman-Actuarial $35,000-Age 64-13 yrs.	1 yr. lv w/pay		
R. Johnson-Wichita $10,022-Age 62-44 yrs.	None		
G. Munch-Law $30,125-Age 60-36 yrs.	None		

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
APR 4 - 1977

E

EARLY RETIREMENTS		DEFERRED ANNUITIES	
Employee Data	Term. Allow.	Employee Data	Term. Allow.
YEAR 1966			
L.T. Noel-Sales $19,275-Age 60-43 yrs.	1 yr. salary	J. Goehring-Office Op. $9,256-Age 46-12 yrs.	14 wks. salary
E. Higgins-Control $12,840-Age 60-46 yrs.	1 yr. salary	C. Cefola-Public Rel. $16,650-Age 53-21 yrs.	32 wks. salary
M. Hoerning-Underwriting $11,210-Age 61-47 yrs.	1 yr. salary		
G. Cole-Office Op. $19,725-Age 61-43 yrs.	1 yr. salary		
W. Wilkinson-Farm Mtg. $14,850-Age 62-14 yrs.	4 mos. lv w/pay		
G. Nashold-Office Op. $11,790-Age 61-34 yrs.	1 yr. salary		
R. Carr-Office Op. $9,750-Age 61-36 yrs.	1 yr. salary		
J. Johnston-Office Op. $10,975-Age 60-45 yrs.	1 yr. salary		
YEAR 1967			
S. Odell-Underwriting $10,400-Age 63-48 yrs.	6 mos. lv w/pay	L. Heilbron-Underwriting $14,850-Age 42-22 yrs.	None
B. Pitt-Office Op. $9,126-Age 62-47 yrs.	1 yr. salary	H. Entrekon-Mtge. Inv. $12,662-Age 36-11 yrs.	None
W. Brown- Erie $8,827-Age 59-40 yrs.	1 yr. salary	D. Mickel-E.D.P. $15,500-Age 35-11 yrs.	None
H. Glenn - Underwriting $10,831-Age 62-42 yrs.	6 mos. lv w/pay	L. Durso-Controller's $8,632-Age 37-20 yrs.	28 wks. salary
R. Walker-Underwriting $11,299-Age 62-43 yrs.	4 mos. lv w/pay	P. Lumstall-Sales $12,146-Age 38-10 yrs.	None
T. Bramlett-Phoenix $8,658-Age 55-37 yrs.	1 yr. lv w/pay		

EARLY RETIREMENTS		DEFERRED ANNUITIES	
Employee Data	Term. Allow.	Employee Data	Term. Allow.
YEAR 1968			
E. Embser-CSO $8,580-Age 60-36 yrs.	1 yrs. salary	A. Allen-Health $8,803-Age 32-10 yrs.	None
J. Fahey-Audit $9,170-Age 63-24 yrs.	4 mos. lv w/pay	M. Roberts-Syracuse $11,882-Age 38-10 yrs.	9 wks. salary
A. Schenck-Portland, Me. $8,684-Age 60-42 yrs.	1 yr. salary	J. Goodseit-Group $8,567-Age 50-10 yrs.	None
A. Muller-Sales $10,205-Age 60-42 yrs.	1 yr. salary	M. Powell-Philadelphia $8,620-Age 51-12 yrs.	None
C. VanRiper-Office Op. $14,664-Age 60-40 yrs.	1 yr. salary	J. Miller-Sales $11,300-Age 40-16 yrs.	None
S. Hoffman-Evanston, Ill. $9,537-Age 63-40 yrs.	None		
S. Gumo-Controller's $13,072-Age 62-44yrs.	1 yr. salary		
W. Smith-Hartford $9,464-Age 62-44yrs.	1 yr. salary		
O. Gehrman-Milwaukee $11,554-Age 63-48 yrs.	None		
T. Lokke-Audit $10,244-Age 62-46 yrs.	1 yr. salary		
L. Erickson-Office Op. $10,663-Age 63-25 yrs.	5 mos. lv w/pay		
YEAR 1969			
H. Neal-Sales $10,868-Age 59-36 yrs.	1 yr. salary	B. Chase-San Francisco $8,639-Age 34-12 yrs.	None
P. Reiland-Rochester $8,970-Age 60-45 yrs.	1 yr. salary	L. DeYoung-Lansing $9,256-Age 32-14 yrs.	18 wks. salary
R. Bollman-Mtge. Inv. $22,600-Age 61-33 yrs.	1 yr. salary	J. Brion-Public Relations $22,700-Age 48-22 yrs.	None
J. Parks-Baltimore $10,582-Age 60-42 yrs.	1 yr. salary	P. Stutts-Sales $20,900-Age 35-13 yrs.	None

EARLY RETIREMENTS

Employee Data	Term. Allow.
J. Rudisill-Charlotte $9,005-Age 64-45 yrs.	None
M. Brainerd-Sioux City $9,474-Age 62-42 yrs.	None
E. Hyer-Personnel $19,400-Age 61-43 yrs.	1 yr. salary
W. Franke-Group $11,180-Age 61-38 yrs.	1 yr. salary
V. Keane-Law $35,500-Age 62-29 yrs.	4 mos. lv w/pay
W. Avy-Office Op. $17,100-Age 61-40 yrs.	1 yr. salary
A. Giere-Sales $9,854-Age 56-39 yrs.	1 yr. salary
K. Fischer-Policy Issue $8,874-Age 62-15 yrs.	None
K. Egbertson-Sales $13,806-Age 61-45 yrs.	1 yr. salary
F. Jackson-Sales $37,000-Age 62-32 yrs.	8 mos. lv w/pay
B. McQuillen-Encino $9,724-Age 55- 32 yrs.	1 yr. salary
R. Ward-Office Op. $10,764-Age 61-44 yrs.	1 yr. salary
E. Gilson-Law $13,884-Age 64-40 yrs.	6 mos. lv w/pay
T. Brodie-San Francisco $9,464-Age 61-42 yrs.	1 yr. salary
P. Thomson -Actuarial $22,600-Age 60-38 yrs.	1 yr. salary
D. Mason-Montgomery $10,062-Age 61-42 yrs.	1 yr. salary

DEFERRED ANNUITIES

YEAR 1960 (cont)

Employee Data	Term. Allow.
P. Cleary-Group $10,402-Age 48-27 yrs.	44 wks. salary
D. Belfi-Public Relations $9,448-age 48-26 yrs.	None
S. Thing-Underwriting $9,396-Age 28-10 yrs.	None

A93

EARLY RETIREMENTS

Employee Data	Term. Allow.
M. Lokke-Control $14,326-Age 60-45 yrs.	1 yr. salary
C. Parker-Office Op. $15,548-Age 60-42 yrs.	1 yr. salary
T. Burgess-Audit $26,600-Age 61-25 yrs.	40 wks. salary (+3 mos. lv w/pay)
M. Hirons-Sales $9,239-Age 60-31 yrs.	None
S. Varvaro-Group $10,972-Age 61-47 yrs.	1 yr. salary
J. Sybinski-Policy Issue $8,866-Age 61-45 yrs.	1 yr. salary
A. Fox-Underwriting $13,416-Age 60-43 yrs.	1 yr. salary
W. Unser-Office Op. $8,840-Age 56-39 yrs.	1 yr. salary
R. Robertson-Policy Pay. $16,042-Age 61-31 yrs.	1 yr. salary
M. Patterson-East Orange $10,544-Age 55-10 yrs.	None
E. Davis-Columbus, Ga. $9,840-Age 55-10 yrs.	None
E. Recio-Law $8,658-Age 61-41 yrs.	1 yr. salary
I. Olsen-Sev. Inv. $23,100-Age 57-40 yrs.	1 yr. salary
H. Phillippsen-Albany $11,856-Age 61-45 yrs.	1 yr. salary
S. Stephenson-Tampa $11,674-Age 60-41 yrs.	1 yr. salary
E. Schultz-South Bend $10,478-Age 61-44 yrs.	1 yr. salary

DEFERRED ANNUITIES

Employee Data	Term. Allow.
G. Calfo-Public Relations $23,332-Age 44-10 yrs.	None
G. Munro-Group $38,000-Age 45-12 yrs.	None
C. Rahman-Personnel $14,898-Age 34-13 yrs.	16 wks. salary
C. Bannon-Actuarial $9,840-Age 31-13 yrs.	None
W. Conroy-Syracuse $26,200-Age 36-13 yrs.	None
D. Bolk-Sales $9,266-Age 28-10 yrs.	None
E. Bohne-Controller's $8,874-Age 30-11 yrs.	None
R. Laible-Group $25,000-Age 42-20 yrs.	None
C. Cloyd-Montgomery $10,127-Age 36-12 yrs.	None
M. Becker-Group $25,300-Age 36-14 yrs.	None
D. Kass-Actuarial $28,800-Age 38-17 yrs.	None
P. Martire-Actuarial $8,717-Age 29-12 yrs.	None
B. Maltese-Group $9,918-Age 29-11 yrs.	None
E. Matulich-Group $24,400-Age 36-10 yrs.	None
C. Darling-Controller's $25,300-Age 37-13 yrs.	16 wks. salary
E. Dalton-Group $27,500-Age 39-18 yrs.	None
B. Anderson-Detroit $9,761-Age 35-10 yrs.	None

YEAR 1970

A93

EARLY RETIREMENTS

Employee Data	Term. Allow.
J. Martin-Office Op. $9,709-Age 64-50 yrs.	6 mos. lv w/pay
H. Nathan-Group $11,518-Age 60-40 yrs.	1 yr. salary
L. Brinster-Promad $14,720-Age 63-47 yrs.	7 mos. lv. w/pay
C. Wehner-Group $17,030-Age 61-45 yrs.	1 yr. salary
W. Evers-Control $10,218-Age 60-42 yrs.	1 yr. salary
H. Falkenstern-Underwriting $12,480-Age 59-40 yrs.	1 yr. salary
M. Hand-CSO $12,220-Age 60-43 yrs.	1 yr. salary
E. Boyer-Group $8,926-Age 55-10 yrs.	None
W. Schmidt-Actuarial $68,500-Age 56-27 yrs.	8 mos. lv w/pay
E. Forrest-Boston $13,026-Age 61-45 yrs.	1 yr. salary
J. Krakora-Seattle $12,220-Age 59-41 yrs.	1 yr. salary

DEFERRED ANNUITIES

Employee Data	Term. Allow.
J. Neubauer-Promad $8,918-Age 31-13 yrs.	16 wks. salary
E. Jones-Group Sales $19,027-Age 35-10 yrs.	None
R. Farrell-Group Regional $21,628-Age 42-14 yrs.	28 wks. salary
G. Lavoie-Group Sales $25,631-Age 47-16 yrs.	None
G. Ronsone-Group $10,362-Age 33-14 yrs.	None
G. Spielman-Control $17,600-Age 32-11 yrs.	None
J. Nicolle-Group $20,800-Age 40-17 yrs.	34 wks. salary
E. Taylor-Group $10,466-Age 28-11 yrs.	None
A. Gribbin-Group $24,700-Age 38-13 yrs.	None
G. Gobbo-Group $10,205-Age 30-10 yrs.	None
C. Dings-Sales $12,600-Age 33-12 yrs.	None
A. Patt-Washington, D.C. $8,874-Age 43-10 yrs.	None
G. Wloszcyna-Underwriting $9,292-Age 28-11 yrs.	None
A. Tyler-Newark $11,327-Age 49-11 yrs.	None

YEAR 1971

A93

EARLY RETIREMENTS

Employee Data	Term. Allow.
H. Attmore-Control $19,200-Age 57-39 yrs.	1 yr. salary
J. Abels-Equity $12,220-Age 61-46 yrs.	1 yr. salary
E. Carlson-Actuarial $14,456-Age 60-41 yrs.	1 yr. salary
P. Dunn-Sales $12,766-Age 60-43 yrs.	1 yr. salary
J. Malone-Group $17,025-Age 61-37 yrs.	1 yr. salary
W. Pulvermacher-Group $14,430-Age 58-41 yrs.	1 yr. salary
H. Nelson-Waterloo $10,400-Age 64-47 yrs.	None
W. Hewitt-Office Op. $12,844-Age 61-46 yrs.	1 yr. salary
G. Ashworth-Actuarial $16,770-Age 61-44 yrs.	1 yr. salary
R. Corry-Group $13,676-Age 60-41 yrs	1 yr. salary
C. Englesbe-Control $8,840-Age 60-41 yrs.	None
S. Cocuzza-Office Op. $8,658-Age 61-46 yrs.	1 yr. salary
D. Barrett-Selection $17,030-Age 60-37 yrs.	1 yr. salary
B. Hardy-Audit $13,234-Age 61-46 yrs.	1 yr. salary
O. Nielsen-E.D.P. $10,296-Age 61-46 yrs.	1 yr. salary
S. Beach-Health $15,158-Age 64-33 yrs.	None
A. Bletsch-Selection $18,500-Age 60-42 yrs.	1 yr. salary

DEFERRED ANNUITIES

Employee Data	Term. Allow.
J. Shallcross-San Diego $14,066-Age 53-10 yrs.	10 wks. salary
M. Schaupp-Policy Issue $11,206-Age 34-15 yrs.	None
M. Scerbo-Group $10,140-Age 32-14 yrs.	None
H. Stracke-Jacksonville $11,726-Age 50-11 yrs.	None
M. Anderson-Compensation $11,128-Age 50-11 yrs.	None
M. Shreve-Casper $10,244-Age 47-21 yrs.	20 wks.
L. Vinciquerra-Personnel $11,484-Age 39-16 yrs.	None
M. Kubat-Hayward $8,762-Age 41-11 yrs.	None
B. Leo-Washington, D.C. $8,840-Age 47-28 yrs.	None
F. Vancho-Sales $11,102-Age 35-10 yrs.	None
B. DeLisle-Milwaukee $9,256-Age 44-14 yrs.	None
R. Lisi-Group $8,840-Age 28-10 yrs.	None
M. Rutherford-Policy Issue $8,840-Age 33-16 yrs.	None
T. Iorio-Office Op $9,412-Age 45-16 yrs.	22 wks. salary

YEAR 1972

EARLY RETIREMENTS

Employee Data	Term. Allow.
O. Peters-Policy Issue $12,402-Age 60-43 yrs.	1 yr. salary
E. Thompson-Selection $12,506-Age 60-41 yrs.	1 yr. salary
C. Robbins-Mortgage Inv. $32,600-Age 64-30 yrs.	8½ mos. lv w/pay
A. Alexander-Audit $14,404-Age 60-31 yrs.	1 yr. salary
W. Wolff-Law $12,610-Age 60-46 yrs.	1 yr. salary
G. Toell-Office Op $12,064-Age 60-43 yrs.	1 yr. salary
G. Schwab-Controller's $13,416-Age 61-43 yrs.	1 yr. salary
L. Coddington-CSO $9,776 Age 61-45 yrs.	1 yr. salary
C. Wilson-Sales $18,300-Age 64-47 yrs.	None
A. Klugewicz-CSO $16,614-Age 60-43yrs.	1 yr. salary
A. Becker-N.Y.-Gatto $12,220-Age 61-44 yrs.	1 yr. salary
J. Garbarini-Group $10,296-Age 61-46 yrs.	1 yr. salary
F. Jenkusky-Office Op. $8,944-Age 61-35 yrs.	1 yr. salary
O. Holland-Whittier $10,686-Age 64-38 yrs.	None
A. Gelardi-Selection $13,442-Age 61-46 yrs.	1 yr. salary
H. Myrtle-Medical $9,464-Age 61-38 yrs.	1 yr. salary
J. Ritter-Group $11,830-Age 60-44 yrs.	1 yr. salary
C. Hollander-Law $32,800-Age 59-36 yrs.	None

DEFERRED ANNUITIES

Employee Data	Term. Allow.
YEAR 1972 (cont)	

Personnel Department
October, 1972

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

W. R. McMillan

APR 4 - 1977

November 16, 1970

F

discussed the way in which we could respond to Carl Hellammer's interest in time off and/or early retirement.

Carl has shifted somewhat in the timing of what he is after. We too have shifted somewhat.

I think it is important to note that our arrangement with Carl is not in the nature of a termination allowance since we do not want him to leave and do not consider it as being in the interest of the Company for him to take early retirement . . . although, of course, this is [redacted] if he wishes to do so.

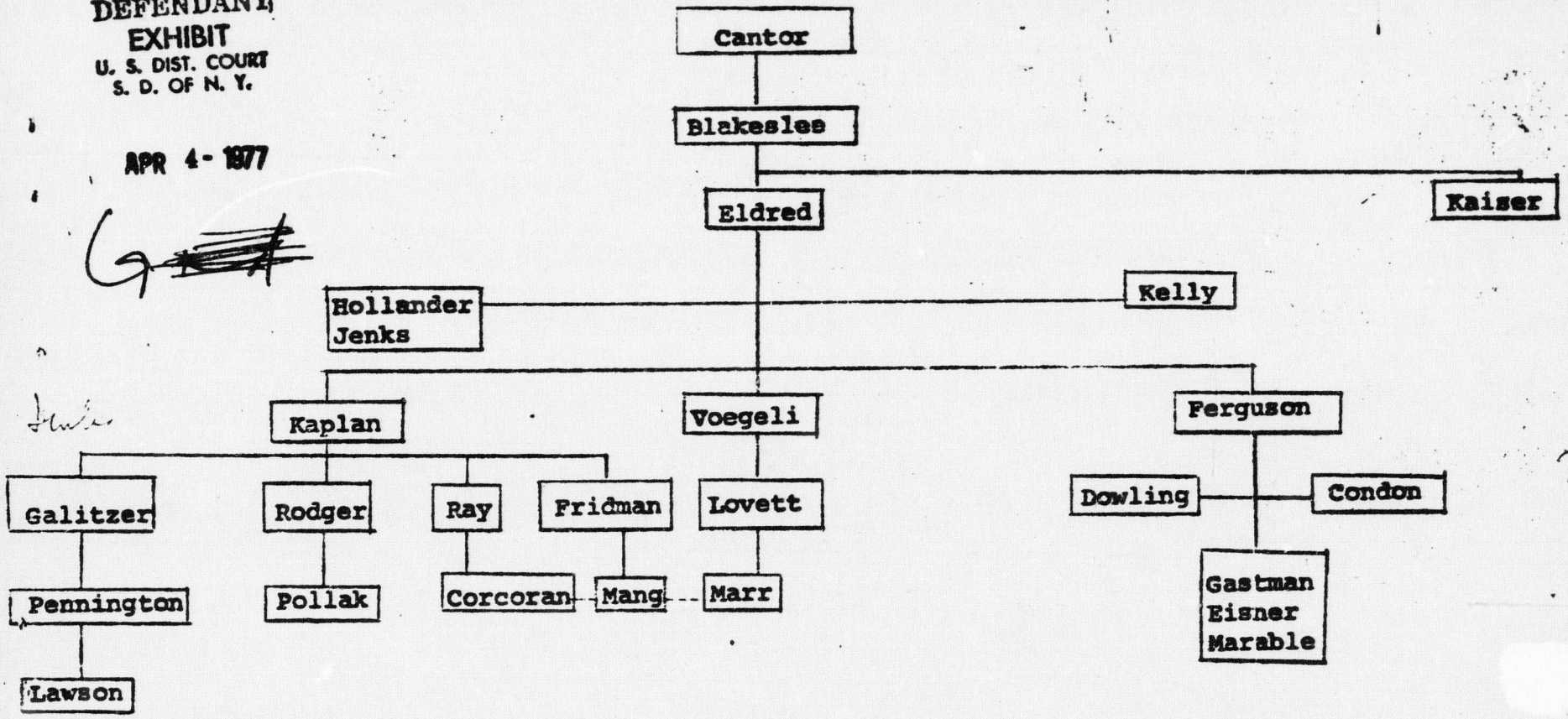
Carl is particularly interested from a health and family standpoint in combining the vacation and allowable time off that remains to him for 1970 and 1971 with whatever leave of absence the Company would give him. His original interest was to start in November. He now is willing to wait until January 1. On January 1 he would begin a period which would combine his accrued 1970 and 1971 vacation and allowable time off with a leave of absence with pay that would be in the nature of approximately three months. He would then return to work on June 30. Under this arrangement he would not consider early retirement any earlier than December 31, 1971.

cc: S. Cantor
J. Giannotti

A94

DEFENDANT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

APR 4 - 1977



Kaplan-Corporate Operations
Responsible for Law Department functions relating to:
(1) Wage/Price Commission problems
(2) Board of Trustees
Charter amendments
By-Law amendments
Agendas
(3) Security Plan
(4) Group Life, Health and Pension Plans
(5) Taxation
(6) SEC Matters

Voegeli - Litigation
Responsible for Law Department functions relating to:
(1) All litigation except cases relating to security investment and real estate
(2) Group and Individual Life and Health claims
(3) Insurance Department and Sales Department complaints
(4) Audit problems
(5) Fair Credit Reporting Act

Ferguson - Insurance Operations
Responsible for Law Department functions relating to:
(1) Individual Life and Health policy forms
(2) Forms and procedures relating to the Company's insurance operations
(3) Rights and Title problems
(4) Clearance of advertising and sales brochures

A95